Dinosaur Shell	RF315-4953
Dwights APCO	RF310-70
Eugene Funk Trucking	RF310-276
Hayes Gulf Station	RF300-7701
Healdton Oil Co., Inc	RF310-263
Kanowsky Manufacturing Inc	RF310-274
Knox Oil of Texas, Inc	RF300-10400
	RF300-10402
	RF300-10403
	RF300-10404
	RF300-10406
Lanes Gocery & Gas	RF310-302
Lily Truck Leasing	RF300-9638
Midwest Specialized Transport	RF310-316
Montgomery Ward & Co., Inc	RF304-5493
	RF304-5521
	RF304-5790
	RF304-5911
	RF304-5930
	RF304-6086
	RF304-6569
	RF304-6704
	RF304-7003
Mrs. Floyd F. Smith	RF307-9651
N&S Trucking, Inc	RF300-9875
Pankin APCO Service	RF310-53
Pol Lab Supply Services Division, DIO.	RF307-2576
Roby's APCO	RF310-23
Rogers Self Serve	RF310-292
Scruggs Mobil	RF300-7114
Siepkes Service	RF310-13
Terry's APCO	RF310-24
Troy's APCO	RF310-18
Umthum Trucking Co	RF310-275
United Petroleum Corp	RF310-82
United States Air Force	RF307-2671
Walkerville Total Kwick Mart	RF310-46
Webb Oil Company	RF310-42
Wells Oil Co	RF310-281
Wingfield's Gulf	RF300-491
4 Sons Handy Shops	RF310-291

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: March 5, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-5602 Filed 3-9-90; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearing and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $120,000,000 (plus accrued interest) obtained as a result of a consent order which the DOE entered into with Texaco, Inc. of Houston, TX (Case No. KEF 0119). The fund will be available to customers who purchased refined petroleum products from Texaco during the period March 6, 1973 through January 27, 1981.

DATES AND ADDRESSES: Applications for Refund of a portion of the consent order must be filed in duplicate no later than February 28, 1991 and should be addressed to: Texaco Inc. Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF-0119.

FOR FURTHER INFORMATION CONTACT: Texaco Inc. Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2456.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision an Order relates to a consent order entered into by the DOE and Texaco Inc. of Houston, Texas. The consent order settled allegations that Texaco had violated the Federal petroleum price and allocation regulations during the period January 1, 1973 through January 27, 1981. On March 24, 1989, the Office of Hearings and Appeals issued a Proposed Decision and Order which tentatively established refund procedures and solicited comments from interested parties concerning the proper disposition of the consent order fund. 54 FR 13420 (April 3, 1989). Comments were reviewed, and a public hearing was held on June 27, 1989.

As the Decision and Order indicates, Applications for Refund from the portion of the consent order fund available to purchasers of Texaco refined products may now be filed. Appications will be accepted provided that they are filed no later than February 28, 1991. Applications will be accepted from customers who purchased refined petroleum products from Texaco during the period March 6, 1973 through January 27, 1981. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: March 5, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

DECISION AND ORDER OF THE DEPARTMENT OF OF ENERGY

Implementation of Special Refund Procedures

March 5, 1990.

Name of Case: Texaco Inc.

Date of Filing: September 28, 1988.

Case Number: KEF-0119.

In this determination, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the formal opening of the Texaco Inc. (Texaco) refund claims proceeding. Refund applications may now be filed. The procedures, rules and presumptions for different types of claimants are set forth in the text of this Decision, and parties are advised to read carefully any sections relevant to them. Claims will be accepted until February 28, 1991. Refunds will be paid while the filing period is open, so it is to the advantage of claimants to file as soon as possible.

On September 28, 1988, the DOE's Economic Regulatory Administration (ERA) filed with the OHA a Petition for the Implementation of Special Refund Procedures to distribute funds received from Texaco under the terms of a consent order between the DOE and Texaco. In accordance with the procedural regulations at 10 CFR part 205, subpart V (subpart V), the ERA requests in its petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were settled by the Texaco consent order. On March 24, 1989, the OHA issued a Proposed Decision and Order (PDO) which tentatively set forth procedures for disbursement of the Texaco consent order fund. 54 FR 13420 (April 3, 1989). We provided for a 30-day period for the submission of comments regarding the proposed procedures. In submission, at the suggestions of a number of the commentors, on June 27, 1989 we held a public hearing to further consider issues raised in the written comments. The present Decision will address comments received and will set forth final procedures for distribution of the Texaco refined products pool.[1]

Part I below summarizes the tentative procedures set forth in the PDO for distributing the Texaco refined product pool. Part II reviews and considers the comments we received regarding those procedures. Part III sets forth the final refund procedures applicable to parties claiming refunds based upon Texaco's alleged violations of the regulations pertaining to the pricing and allocation of refined petroleum products. The Appendices to this Decision consist of a suggested application form that refund applicants may use (appendix A), a copy

[1] On July 25, 1989, we issued a Decision and Order establishing procedures for the distribution of that portion of the Texaco funds which we determined should be allocated to crude oil claims. *See Texaco Inc.*, 19 DOE ¶ 85,200 (1989), *modified*, 19 DOE ¶ 85,236 (1989) (*Texaco*).

of the OHA Information Sheet (Appendix B) and a list of firms that are or were owned wholly or partly by Texaco and are therefore presumed ineligible for a refund in this proceeding (Appendix C).

I. Summary of the Proposed Texaco Refund Procedures

The procedures we proposed, which were based largely on our extensive experience on administering similar refund proceedings, have largely been agreed to by commentors and we will adopt them here. Where we have decided to change them, our reasons will be explained in detail. *See infra*, Part II.

Texaco is a major integrated refiner which produced and sold crude oil and full range of refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth in 10 CFR parts 210, 211 and 212 and the predecessor regulations at 6 CFR part 150. The ERA conducted extensive audits of Texaco's operations during the price control period, and alleged in several judicial and administrative proceedings that Texaco had violated certain applicable DOE price and allocation regulations in the sale of crude oil and refined petroleum products. Settlement discussions were held, and on March 10, 1988, the ERA and Texaco entered into a consent order. That consent order (Consent Order No. RTXE006A1Z) was finalized on August 29, 1988. 53 FR 32929 (August 29, 1988) (August 29 Notice). The consent order resolved all issues pertaining to Texaco's sales of crude oil and refined petroleum products during the period from January 1, 1973 through January 27, 1981 (the consent order period.[2] Pursuant to the consent order, Texaco will remit a total of $1.25 billion in accordance with a timetable specified in the consent order.[3] As of the date of issuance of the PDO, Texaco had remitted $348 million to the DOE and $52 million to the US. District Court in Kansas in settlement of its obligation in the DOE Stripper Well Exemption Litigation, M.D.L. 378.

In the PDO, we noted that the subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan to distribute funds received as a result of enforcement proceedings. We further stated that the DOE policy is to use the subpart V process to distribute such funds. We therefore tentatively granted the ERA's petition and assumed juristiction over the disbursement of the Texaco consent order fund.

Because the consent order resolves alleged violations involving both the sales of crude oil and refined petoleum products, we proposed to divide the consent order fund into two pools. As we stated in the PDO, the ERA determined that $120,000,000 of the total consent order fund was attributable to refined product issues, and the remaining $1,130,000,000 (including the $52 million paid to the U.S. District Court of Kansas) to crude oil related issues. *See* August 29 Notice at 32931. In the Decision and Order establishing the procedures for the distribution of the crude oil portion of the Texaco consent order fund, we agreed with the division of the consent order fund into crude oil and refined product pools in the amounts suggested by the ERA. *Texaco*, 19 DOE at 88,370. It is the distibution of the $120,000,000 to injured purchasers of Texaco refined products that is the subject of this Decision and Order.

Under the procedures set forth in the PDO, we presumed that Texaco's alleged violations occurred with the same frequency in all sales of refined products made by Texaco during the consent order period and that refunds should thus be made on a pro rata or volumetric basis. Under this "volumetric" refund approach, a claimant's "allocable share" of the refined product pool is equal to the number of gallons of covered products purchased during the consent order period times a per gallon refund amount. In the PDO, we tentatively set this refund amount at $0.001136 per gallon. We derived this figure by dividing the consent order funds allocated to the Texaco refined product pool ($120,000,000) by the approximate number of gallons of covered products other than crude oil which Texaco estimated it sold from March 6, 1973 the date that Texaco became subject to the Federal price controls under Special Rule No. 1, 38 FR 6283 (March 8, 1973), through the date of decontrol for the relevant products (a total of 105,590,045,356 gallons).

In accordance with prior Subpart V proceedings, we also proposed to adopt a number of presumptions regarding injury for certain categories of Texaco refined product purchasers. We tentatively adopted a presumption that an end-user or ultimate consumer of Texaco petroleum products whose business is unrelated to the petroleum industry was injured by the alleged petroleum overcharges settled by the consent order. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. We therefore proposed that end-users of Texaco refined petroleum products need only document their purchase volumes from Texaco during the consent order period to make a sufficient showing that they were injured by the alleged overcharges and to receive a full volumetric refund.

We also proposed that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement, need only submit documentation of its purchases, or in the case of a cooperative, volumes sold to its members. However, we stated that any regulated firm or cooperative whose allocable share is greater than $10,000 would be required to (i) certify that it will pass through any refund it receives to its customers or member-customers, (ii) provide us with a written explanation of how it plans to accomplish the restitution, and (iii) notify the appropriate regulatory body or membership group of the receipt of the refund. These requirements are based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers through the operation of automatic adjustment mechanisms. Similarly, any refunds received should be passed through to its customers. With respect to a cooperative that sold petroleum products, in general, the cooperative agreement which controls its business operations would ensure that the alleged overcharges, and similarly refunds,

[2] The consent order also resolved certain allegations against Getty Oil Company, which has been acquired by Texaco. Those allegations relate to crude oil exchanges between Getty and Standard Oil Company of Ohio and were the subject of a Supplemental Remedial Order issued to Getty on July 17, 1986. Notice of Proposed Consent Order, 53 FR 15106, 15107–08 (April 27, 1988); *Getty Oil Co.*, 14 DOE ¶ 83,033 (1986).

[3] As these funds are received, they will be held in an interest-bearing escrow account at the Department of the Treasury pending the determination regarding their proper distribution. In addition, interest on the unpaid balance of the consent order amount accrues at a rate of 8.85 percent per annum. Texaco Consent Order ¶ 404.

would be passed through to its member-customers.

We also tentatively adopted the presumption that a firm which resold Texaco products and requests a refund under the small claims threshold was injured by the alleged Texaco regulatory violations. Under the proposed small claims presumption, a reseller claimant [4] seeking a refund of $10,000 or less, exclusive of interest, would not be required to submit evidence of injury beyond documentation of the volume of Texaco covered products it purchased during the consent order period.[5] As we have noted in numerous other proceedings, there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; in some cases, that expense might exceed the expected refund. Consequently, failure to allow simplified application procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, the use of a small claims presumption allows the OHA to process claims more efficiently.

We also tentatively adopted a 40 percent presumptive level of injury for all medium-range claimants in this proceeding. Under this presumption, a reseller claimant whose allocable share of the consent order fund is greater than $10,000 may, in lieu of making a detailed demonstration of injury, elect to receive a presumption refund of $10,000 or 40 percent of its allocable share up to $50,000, whichever is greater. The presumptive level of injury of 40 percent would apply to all medium-range claimants, regardless of the type of Texaco refined products that they purchased. We stated that the use of this presumption reflects our conviction that these claimants were likely to have experienced some injury as a result of the alleged overcharges.

We therefore proposed that an applicant in this group would only be required to provide documentation of its purchase volumes from Texaco during the consent order period in order to receive the larger of $10,000 or 40 percent of its allocable share.

We also proposed that resellers who were eligible for refunds in excess of $10,000, but who did not elect to have their claim considered under the medium-range presumption or limited to $50,000 would be required to provide a detailed demonstration of injury. We stated in the PDO that such an applicant would be expected to show that it did not pass on the alleged overcharges to its own customers by demonstrating that it had a bank of unrecouped increased product costs beginning with the first month of the period for which a refund is claimed through the date on which the product was decontrolled. In addition, we provided that such a claimant must demonstrate that market conditions would not have allowed those costs to be passed through to its customers. We suggested that such a showing may be made in a competitive disadvantage analysis, which compares the price paid by the applicant with the average market price for the same product at the relevant level of distribution.

In the PDO we proposed several rebuttable presumptions of non-injury. We found that resellers who were spot purchasers of Texaco refined products were not likely to have been injured by their purchases from Texaco. Spot purchasers had considerable discretion in the timing of their purchases, and therefore would not have made those purchases unless they believed that they were able to pass through the full amount of Texaco's increased selling prices to their customers. In addition, we tentatively adopted a presumption that consignees of Texaco refined petroleum products were not injured by any alleged violations by Texaco.

Finally, we tentatively proposed several procedures to govern the filing of Applications for Refund submitted by representatives on behalf of Texaco refund applicants. In the PDO, we noted that although representatives in previous proceedings had generally provided a useful role in aiding the OHA in notifying potential claimants, some representatives have engaged in questionable practices that have led to many unnecessary errors and have made our task more difficult. As we stated in the PDO, these practices include the solicitation of applicants many months in advance of the formal opening of the filing process, inadequate attention by representatives to duplicate refund applications, and a general lack of knowledge of the substantive and procedural requirements of this Office. In an attempt to remedy these problems, we proposed several measures to be taken by any person or firm representing 10 or more applicants in this proceeding. These included the submission of a statement detailing each representative's qualifications to represent claimants before this Office, procedures it proposes to use in the preparation of Applications in the Texaco refund proceeding, information regarding its solicitation of potential applicants and procedures for distributing refunds it receives on behalf of refund applicants. Additionally, we proposed: (i) Strict compliance with the Subpart V requirement as specified in 10 CFR 205.283 that Applications be signed by the "applicant"; (ii) that representatives be required to post a bond, or place funds in escrow, in order to protect their clients; and (iii) that all refund applicants who are represented by filing services and who signed Applications before the issuance date of the final Decision and Order certify that as of the current date they still wish to be represented by the representative in the Texaco proceeding and that they will not file a duplicate claim.

II. Analysis of Comments Regarding the Distribution of the Texaco Refined Product Pool

As we stated earlier, the PDO was published in the **Federal Register** in April 1989. In addition, the OHA mailed the PDO to many interested parties. This generated numerous written comments regarding our proposed refund procedures. In addition, we held a public hearing on June 27, 1989. In total, 137 parties either submitted comments or offered testimony at the public hearing. Those parties consisted of 10 law firms or legal practitioners,[6] 7 firms engaged primarily or solely in the filing of refund applications on behalf of claimants,[7] one trade association, the National Association of Texaco Wholesalers (NATW); and 119 former Texaco consignees. These comments focused primarily on three areas: The presumptions of injury for resellers, the treatment of Texaco consignees, and proposals in the PDO regarding the

[4] Unless otherwise specified, in this Decision the term "reseller" will be used to refer to refiners, wholesalers and retailers who purchased and resold Texaco refined petroleum products.

[5] The $10,000 small claims threshold tentatively established in the PDO represents an increase from the $5,000 threshold used in many prior proceedings. In the PDO, we stated that the small claims amount should be increased to $10,000 in this proceeding since the large volumetric refund amount of $0.001136 would place many applicants who purchased relatively small volumes over the small claims threshold used in prior proceedings.

[6] Those law firms or sole practitioners were Robert Bassman and Douglas Mitchell of Bassman, Mitchell and Alfano, representing 525 individual marketers of Texaco refined petroleum products; Attorney Philip Kalodner; Collier, Shannon, Rill and Scott, representing the Society of Independent Gasoline Dealers of America; Robert P. Williams, II of Troutman, Sanders, Lockerman and Ashmore; Borenkind and Mondeschein; Michael O'N. Barron; William H. Bode and Associates; John Varnum of Baker and McKenzie; Amy Loeserman Klein and William H. Cohen representing five ocean carriers and J. Bradley Ortins, Andrew P. Miller and Milton B. Whitfield of Dickstein, Shapiro and Morin, representing 28 state governments and two territories.

[7] These seven firms were Energy Refunds, Inc.; Federal Refunds, Inc.; McMickle and Edwards, Oil Overcharge Consultants; Petroleum Funds, Inc.; Pure Energy; Federal Action; and Akin Energy Inc.

application requirements for claims filed by representatives. We will address comments regarding these and other issues below.

A. The Presumptions of Injury for Resellers

As stated above, in the PDO we proposed to adopt several presumptions of injury to goven the distribution of the $120 million refined products portion of the Texaco consent order fund. Many of the comments we received involved the presumptions of injury for resellers. None of the commentors objected to our proposal to adopt a small claims presumption of injury for refunds of $10,000 or less, and a number agreed that the proposed increase in the small claims amount from $5,000 to $10,000 is more equitable and efficient. Accordingly, we believe it is appropriate to adopt a small claims presumption level of $10,000 for the Texaco refund proceeding.[8] Bassman, Mitchell and Alfano (BMA) has filed comments suggesting that OHA should reconsider the medium-range presumption of 40 percent proposed in the PDO. BMA contends that a medium-range threshold of 75 percent for motor gasoline and 50 percent for middle distillates would be more appropriate for the Texaco refund proceeding. BMA claims that higher presumption levels will more accurately reflect the levels of injury incurred by Texaco resellers of those products.[9] To support this position, BMA has submitted information it gathered in a survey of its clients who were Texaco wholesalers during the period of controls. Each survey respondent indicated the volume of Texaco products it purchased and the price it paid to Texaco for those products. Of the 97 usable responses, 79 were from purchasers of regular gasoline, 73 from purchasers of premium gasoline and 59 from purchasers of middle distillates. BMA compared the pricing information received from these respondents to the average market price for that product in the relevant marketing region as recorded by *Platt's Oilgram and Oilmanac*, a reliable source of average market price data. In those months in which the respondent paid more than the average market price as recorded by *Platt's*, BMA considered the respondent to be "injured" for that month. BMA then computed the percentage of months that the respondents paid greater than the market average. In the survey sample, an average of 75 percent of motor gasoline purchases and 50 percent of distillate purchases were made at above market average prices.[10]

Upon review of the information that BMA has submitted, we have reconsidered the proposed 40 percent presumption. BMA's survey information now convinces us to increase the presumption level. However, separate presumption levels for motor gasoline and middle distillates would not be practical. Although we have previously utilized separate presumption levels for separate products, *see, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*), and *Getty*, this practice was not an efficient one. Multiple presumption levels created confusion among applicants, led to administrative problems for the OHA, and delayed the issuing of refunds to applicants. Therefore, in recent refund proceedings involving global consent orders, we have adopted a single medium-range presumption level. *See, e.g., Exxon Corp.*, 17 DOE ¶ 85,590 (1988) (*Exxon*); *Shell Oil Co.*, 18 DOE ¶ 85,492 (1989) (*Shell*). This decision rested upon our belief that "[t]he purpose of the medium-range presumption approach is to provide a simplified alternative refund procedure for certain types of applicants and allow OHA to process these applications with greater efficiency." *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,511 (1986) (*Marathon*). These same considerations will govern here. As we have decided in all recent proceedings involving global consent orders, a single presumption level for all products sold at all levels of distribution is the most efficient way to handle a large number of claims.[11]

We also are not persuaded by BMA's alternative argument that we adopt a single, higher medium-range presumption level for all products representing a weighted average of BMA's motor gasoline and distillate data.[12] Several weaknesses are apparent in the survey information on which BMA would have us rely for this purpose. All responses received by BMA were from Texaco wholesalers. However, according to information received from Texaco, sales to wholesalers comprised only 26.8 percent of its total sales volume. *See* Texaco letter. Using sample data for a segment constituting only approximately one-fourth of the total sales volume universe would be unreliable. Additionally, BMA's proposal to adopt a higher medium-range presumption level based upon a weighted average would overcompensate a significant percentage of potential claimants. In making its calculations, BMA has simply averaged the "injury" responses that it has received. However, the survey respondents indicate that a large percentage of the survey respondents allege they were injured less than 62 percent of the time.[13] Thus, were we to

[8] One commentor, Webster Olson, an individual motorist from Chicago, Illinois, objects to the small claims presumption, stating that motorists that purchased asoline, and not Texaco retailers, are the victims of Texaco's alleged violations and therefore should receive refunds. It is important to note that the small claims presumption does not constitute a determination that resellers absorbed all of the alleged Texaco overcharges; nor does it preclude end-users from receiving refunds. However, because of the administrative costs in processing refund applications, we cannot approve refunds of less than $15.00. Most individual motorists did not purchase enough Texaco products to qualify for this minimum cutoff. It is for this reason that any funds remaining after the payment of eligible claims will be distributed to state governments to provide indirect restitution through energy conservation programs to the many citizens who were injured by the alleged Texaco overcharges but who could not satisfy the $15.00 threshold. See infra, Part IIIC.

[9] BMA has not made any proposals regarding the presumptive levels for resellers of products other than motor gasoline and middle distillates.

[10] This method is similar to that adopted by this Office in the *Getty* proceeding. *See Getty Oil Co.*, 15 DOE ¶ 85,064, (1986) *(Getty)*. In *Getty* the DOE initially proposed that different presumption levels be established for each level of distribution of motor gasoline. The Proposed Decision and Order in the *Getty* proceeding determined that based upon company-specific information obtained from the Energy Information Administration (EIA) regarding Getty's pricing of motor gasoline, a medium-range presumption level of 7 percent should be established for wholesalers of motor gasoline. *See Getty Oil Co.*, 50 FR 51934, 51938 (December 20, 1985). BMA pointed to inaccuracies and contradictions in the EIA information and submitted survey results which indicated that a presumption level of 41.5 to 51.0 percent would be more appropriate for wholesalers of motor gasoline. We agreed to raise the presumption and adopted a medium-range presumption of 40 percent for resellers of motor gasoline in that proceeding.

[11] Furthermore, the adoption of different presumption levels for motor gasoline and distillates, as proposed by BMA, would be unfair to purchasers of other Texaco products. In the cases where we have adopted different presumption levels for certain products, we have not established any medium-range presumption levels for purchasers of other refined products. *See Amoco; Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985) (*Mobil*). In the present case, these other refined products (natural gas liquids (NGLs), natural gas liquid products (NGLPs), residual fuels, aviation fuels, etc.) comprised 26.7 percent of Texaco's sales by volume during the control period. *See* letter from Stephen Bard, General Attorney, Texaco Inc., to Richard W. Dugan, Associate Director, OHA (November 16, 1989) (Texaco letter). The BMA medium-range presumption levels thus exclude a significant percentage of Texaco's total sales.

[12] Based on the information BMA has submitted, this weighted-average presumption level would be 62 percent.

[13] Of the respondents who were middle distillate wholesalers, a majority (67 percent) experienced injury below 62 percent. The surveys indicate that of the regular gasoline wholesalers, 28 percent reported injury levels of less than 62 percent. For premium gasoline, 25 percent of the respondents reported injury levels of less than 62 percent.

average the survey results, the presumption level derived would not accurately reflect the injury level experienced by a significant proportion of the survey respondents. We would therefore overcompensate two-thirds of the purchasers of middle distillates and a significant percentage of motor gasoline resellers. We recognize that this risk is inherent in establishing any medium-range presumption. Yet, in this instance, raising the medium-range presumption level to 62 percent would only exacerbate the problem, and we do not believe that equity or efficiency favors adopting this proposal.[14]

Taken collectively, these questions regarding the sufficiency of the survey information convince us that it would not be proper to adopt the presumption levels that BMA has suggested. However, based on the BMA information, some modification in the medium-range presumption is in order. First, the BMA information does indicate that a significant group of Texaco customers—motor gasoline and middle distillate wholesalers—paid more than the market average a large percentage of the time. Secondly, both BMA and the NATW have presented information regarding Texaco's declining market share nation-wide during this period. BMA has submitted information showing that Texaco's national market share fell from over 8 percent (1st place) in 1973 to 5.85 percent (5th place) in 1981. BMA. May 3, 1989 Comments at 7. We have previously determined that the existence of a declining market share by a consent order form may serve as evidence of uncompetitive pricing practices by that firm. *Cf. Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 at 88,051–2 (1982) (decline in retailer's market share may be caused by supplier's increased prices).[15] In view of these factors, we believe that the adoption of a medium-range presumption of 50 percent is reasonable. It applies not only to those resellers that were the focus of the BMA survey, but also to all resellers of Texaco refined petroleum products, including NGLPs, residual fuels, etc.

Several commentors have suggested that we also modify the maximum refund amount that an applicant can receive under the medium-range presumption. These commenters suggest that the maximum refund amount that resellers may receive under this presumption without any showing of injury be raised from $50,000 to $100,000. BMA argues that since the suvey it conducted shows that many more claimants can demonstrate higher levels of injury, an increase in the maximum amount is warranted to avoid a large number of claims which attempt to demonstrate a specific level of injury. The law firm of Collier, Shannon, Rill and Scott (CSRS) also argues that the medium-range limit should be extended to $100,000 to avoid an excessive number of attempted injury showings. *See* CSRS comments (May 3, 1989).

We are convinced by this suggestion that the upper limit should be increased to $100,000. Under the medium-range presumption of 50 percent that we will adopt for this proceeding, a claimant would have had to purchase more than 90,909,090 gallons during the consent order period to be eligible for a potential refund of $50,000. Such a reseller would on average have purchased approximately 1,000,000 gallons a month. In our view, claimants this large would likely have the resources to make a showing of injury. To adopt a ceiling of $100,000 for presumption level refunds would allow these large applicants to receive very sizable refund amounts simply by providing their purchase volumes from Texaco. There is nothing in subpart V or our procedures that warrants this result. Accordingly, we will adopt a limit of $50,000 that can be received under the medium-range presumption for resellers.

B. The Treatment of Texaco Consignees

In the PDO, we tentatively adopted a presumption that Texaco consignees were not injured by Texaco's alleged price violations and therefore not entitled to receive refunds in this proceeding. This rebuttable presumption has been adopted in several prior refund proceedings involving major oil companies, *e.g., Exxon, Marathon, Getty, Amoco,* and *Mobil,* and is based upon the fact that consignees generally did not retain title to the product that was consigned to them or set the price at which that product was sold. Instead, a consignee received a set per gallon commission from its refiner/supplier and tended to be unaffected by overcharges by its supplier. As a result, consignees were not considered resellers or retailers for the purposes of the DOE price regulations.

In the present proceeding, the NATW and its members have presented a very substantial argument that our position should be reconsidered here in view of the actual business operations of Texaco consignees and the historic practices of Texaco towards its consignee agents. However, before we begin discussion of the issues raised by the NATW, it is helpful to review the treatment of consignees under the Mandatory Petroleum Price and Allocation Regulations.

The regulations promulgated by the DOE and its predecessor agencies controlled both the price charged for petroleum products and the allocation of those products. These regulations recognized the role that consignees played in the distribution of petroleum products and therefore specifically addressed whether, and to what extent, consignees were covered by the regulations. A consignee (sometimes called a commission agent) was defined under the regulations as:

> [A] firm which distributes covered products to purchasers under a contractual arrangement with a refiner under which the refiner retains title to the covered products and specifies the prices to be paid by the purchasers, and under which the refiner pays the consignee agent a commission based upon the volume of covered product distributed by the consignee agent.

10 CFR 212.31 (definition of "Consignee Agent"); 39 FR 12012 (April 2, 1974).

The agency recognized that consignees performed many of the same functions as resellers, but since the price charged for the petroleum products they delivered and their commissions were controlled by the refiner, "the (DOE) reseller price rules have no applicability to consignee agents' commissions." 39 FR at 12012. This position, that consignees were not covered under the Mandatory Petroleum Price Regulations at 10 CFR part 212, was challenged by consignees throughout the period of controls. However, the DOE consistently maintained its position that consignees, unlike resellers and retailers, were not covered under the price regulations. *See* Interpretation 1975–48 (Rotary Gasoline Dealers), 5 Fed. Energy Guidelines ¶ 56,286 (November 24, 1975); Interpretation 1977–8 (R.C. Fresh), 5 Fed. Energy Guidelines ¶ 56,345 (May 11, 1977).

The status of consignees was different under the Mandatory Petroleum Allocation Regulations at 10 CFR Part 211. Under these regulations, the DOE determined that in certain circumstances, a consignee was considered a wholesale purchaser-reseller and was entitled to an allocation from its refiner. In a 1975 ruling, the agency stated that a

---

[14] Furthermore, resellers who have been injured above the presumption level have an opportunity to receive a larger refund if they successfully make a detailed demonstration of injury. *See infra.*

[15] While other factors aid in explaining Texaco's declining market share, such as the withdrawal from several marketing regions, uncompetitive pricing was undoubtedly one factor in explaining this drop. *See, e.g.,* Abercrombie testimony, transcript of Texaco public hearing (Tr.) at 178–79.

consignee would be considered a wholesale-purchaser reseller, and therefore entitled to an allocation from its refiner/supplier, if it had most, if not all, of the following characteristics:

(i) Appropriate facilities and equipment for the conduct of the business of selling and distributing its supplier's products,

(ii) Responsibility, independent of its supplier, for its internal financial management and physical and administrative operation,

(iii) Responsibility to its supplier and others for expenses and liabilities arising from and connected with the business of the transfer and sale of its supplier's products, and,

(iv) Independent control over the disposition of the allocated product, including the right to enter into and terminate relationships with customers rather than solely being restricted to distributing product to customers designated by the supplier.

Ruling 1975–8, 2 Fed. Energy Guidelines ¶ 16,048 at 16,614, Texaco consignees, it was determined, generally had the characteristics of wholesale-purchaser resellers and were entitled to a base period allocation from Texaco. *See* Interpretation 1975–19 (National Association of Texaco Consignees, Inc.), 5 Fed. Energy Guidelines ¶ 56,260 (April 24, 1975).

Although we proposed to establish a presumption in this proceeding that Texaco consignees were not injured, this presumption could be rebutted if a consignee established that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Texaco's pricing practices. *See Texaco Inc.*, 54 FR at 13424 (citing *Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 (1986) (*Gulf/Canter*)). Additionally, as in other proceedings, consignees that qualified as wholesale-purchaser resellers could make allocation-based refund claims in instances where their supplier improperly failed to provide them with their full allocation entitlement. *See Tenneco Oil Co./Kellermyer Inc.*, 10 DOE § 85,092 (1983) (*Tenneco/Kellermyer*).

The NATW maintains these options are inadequate. In its comments, the NATW makes a forceful argument that Texaco consignees in general during the consent order period were seriously injured, and in many cases forced out of business, by Texaco's practices. The NATW contends that Texaco consignees should be eligible for refunds approximating those for which wholesalers of comparable size are eligible. In support of its contention, the NATW first presented evidence and testimony that Texaco consignees were, in effect, functionally equivalent to Texaco jobbers. The NATW argues that Texaco consignees had what amounted to title to the product that they consigned. According to testimony received at the public hearing, Texaco consignees bore the risk of loss for consigned product, were required to carry insurance against such loss and had the ability to reduce the price that they charged for Texaco products. *See* Barstow testimony, Tr. at 137–9. The NATW further claims that its position was supported by the DOE in the adjudication of a dispute between a consignee and Texaco which resulted in the conversion of the consignee to a wholesaler. *See* NATW Comments at 9 (citing *J.A. Nere, Inc.*, Proposed Decision and Order (Case No. DEE–0891) (July 10, 1981) (*Nere*)).

Furthermore, the NATW alleges that Texaco violated the allocation regulations in its treatment of its consignees. Specifically, it alleges that Texaco failed to offer consignees their allocation entitlement from Texaco as mandated under the regulations.[16] The NATW bases this claim on several actions by Texaco. First, the NATW contends that Texaco generally reduced or rescinded a consignee's allocation if the purchaser of the consigned product decreased its purchases or was unable to pay Texaco on time. The NATW contends that these "take backs" were a violation of the allocation regulations since the consignee, not the retail account, had the allocation entitlement with Texaco. *See, e.g.*, NATW's May 3, 1989 Comments at 7. In addition, the NATW and consignee commentors contend that Texaco limited consignees' ability to transfer their allocations among their customers. *See, e.g., Id.* at 8. Furthermore, these commentors contend that Texaco intentionally raised its prices to levels that made it difficult for consignees to sell the product and that Texaco used this pricing policy to actively discourage consignees from taking their full allocation entitlement. *Id.*; Abercrombie testimony, Tr. at 179.

Moreover, the NATW continues, consignees were adversely affected by Texaco's violation of the normal business practices provision of the regulations. This rule stipulated in part that "(s)uppliers will deal with purchasers of an allocated product according to the normal business practices in effect during the base period specified in Part 211 for that allocated product * * * and no suppliers may modify any normal business practices so as to result in the circumvention of any provision of this chapter." 10 CFR 210.62(a). These "normal business practices" included summer fill programs, seasonal credit arrangements and other credit arrangements. Additionally, this section required that "(n)o supplier shall engage in discrimination among purchasers of any allocated product," which included "extending any preference or sales treatment which had the effect of frustrating or impairing the objectives, purposes and intent of (the regulations)." 10 CFR 210.62(b). According to both the comments of the NATW and the testimony at the public hearing by consignees, many of Texaco's actions constituted violations of the normal business practices requirements outlined above.

Specifically, the NATW contends that Texaco actively withdrew many of the credit services provided consignees during the base period. According to the testimony of former Texaco consignees, Texaco refused to increase credit limits for consignee retail accounts during the period of controls. *See, e.g., id.* at 140–41. Additionally, NATW members contend that Texaco also refused to continue to grant credit privileges to new retail accounts of Texaco consignees, thereby encouraging each new account to seek to be supplied by Texaco directly. *See* Barstow testimony, Tr. at 170–71. According to these commentors, Texaco also removed credit privileges extended to consignees to pay for consigned products and required payment on delivery of the product. *See* Abercrombie testimony, Tr. at 198.

The NATW also contends that Texaco violated the normal business practices rule by failing to continue to provide routine maintenance and machinery to consignees or their accounts. According to the NATW, during the base period Texaco had provided consignees with a variety of services, including the loaning of bulk plants, pumps and signs. In addition, Texaco was alleged to have routinely provided services such as lights, paved roads and pumps to accounts supplied by consignees.[17]

[16] In support of these allegations, the NATW has submitted the results of a survey regarding the impact of Texaco's alleged allocation violations. According to the results of this survey, during the years 1974 through 1980, an average consignee was denied approximately 15 percent of its yearly allocation entitlement by Texaco's alleged actions. *See* letter from Thomas West, Executive Director, NATW to Victor Miller, OHA Staff Analyst (June 28, 1989).

[17] The NATW maintains that traditionally the major oil companies had performed these services for consignees as a normal business practice. In support of this claim, the commenting Texaco consignees referred to the disparity between

Continued

According to the NATW, after Texaco refused to continue to provide these services, consignees were forced to provide these services themselves or lose business. The NATW alleges that when a consignee chose to continue to supply these services, the entire cost of the service was absorbed by the consignee since it was unable to raise its price and received no subsequent reimbursement from Texaco. Thus, the NATW claims that Texaco's alleged violation of the normal business practices rule had a direct and deleterious impact on the viability of many consignees' businesses.[18] The NATW contends that the existence of these violations is confirmed by a Remedial Order to Texaco. *See* NATW Comments at 9 [citing Notice of Probable Violation, Amended Proposed Remedial Order, *Texaco Inc.* (Case No. 630R00116)].

The NATW contends that all of these actions were part of an orchestrated attempt by Texaco to eliminate the consignee class of trade. The NATW alleges that Texaco's plans to eliminate consignees as a class are contained in an in-house Texaco report published in 1977 entitled "Texaco 5-year Wholesale Marketing Plan" [hereinafter referred to as the 5-year Plan, a copy of which was submitted for the record in this proceeding]. According to the NATW, the 5-year Plan called for elimination or conversion of all consignees by 1981, a goal that the NATW claims Texaco met on time.[19] *See* NATW comments at 16–17; Abercrombie testimony, Tr. at 196.

As summarized above, the NATW and its members have presented a considerable amount of information regarding the specific practices of Texaco towards its consignee agents. After a detailed review of this evidence, we have concluded that our tentative determination in the PDO that these consignees are not entitled to refunds based upon a presumption of injury conflicts with the record and should be changed. We adhere to our prior determination that Texaco consignees were generally not injured by Texaco's alleged violations of the price regulations.[20] Nevertheless, we have determined that a persuasive case has been made that these consignees were injured by Texaco's alleged allocation practices and that a presumption of injury for consignees should therefore be adopted.

Initially, it is important to reiterate that this final Decision and Order is in no way an adjudication of any of the particular claims made by the consignees. Furthermore, as the consent order states, Texaco does not admit to any violations of the regulations and this Decision does not assess prior allegations or raise new ones against the firm. Instead, we have simply determined that consignees should be presumed eligible for refunds in this proceeding as a matter of equity in light of the evidence of injury that they have presented. In addition, consignees should be eligible for refunds in this proceeding on an equal basis with resellers. That is, for the reasons described below, we have concluded that consignees should be entitled to receive refunds on a volumetric basis just as resellers, and that these refunds should be determined subject to the small claims presumption, medium-range presumption and proofs of injury described in Part III of this Decision.

The major factor in the adoption of a presumption of injury for consignees in this refund proceeding is there is sufficient evidence to conclude that Texaco took actions that resulted in a decrease in the allocations of its consignees below their actual entitlements. In arriving at this determination, we have relied on the standards for evaluating allocation claims that have been adopted in other refund proceedings and applied in evaluating refund applications. *See, e.g., OKC Corp./Town and Country Markets, Inc.*, 12 D.O.E. ¶ 85.094 (1984)[*OKC/Town & Country*]; *Marathon Petroleum Co./Research Fuels, Inc.*, 19 DOE ¶ 85,575 at 89,049–50 (1989), *action for review pending*, CA–3–89–2983–G (N.D. Tex. filed Nov. 22, 1989)[*Marathon/RFI*]. Those standards require that an allocation claimant demonstrate its claim is "not spurious" by showing that (i) it notified the DOE contemporaneously of its alleged allocation reduction, (ii) there is a reasonable likelihood that a violation occurred, i.e., that the consent order firm improperly refused to supply products, and (iii) it was injured as a result of its reduction in allocation.

The information presented by the NATW meets these standards. First, the NATW has submitted numerous letters clearly demonstrating that allegations of improperly reduced allocations of Texaco consignees were presented to the FEA and the DOE during the controls period by the NATW and individual consignees. *See* Request for Interpretation from Fred Causey, Executive Director, NATW, to Robert Montgomery, General Counsel, FEA (April 24, 1975); letter from Gale Barstow, Inc., to Larry White, Acting Director of Compliance, FEA (July 22, 1977); Application for Class Exception, Case No. DEE–6543 (June 9, 1979). Secondly, the NATW and the Texaco consignees have made a reasonable demonstration that the actions allegedly taken by Texaco, which have been summarized above, reduced consignees' allocations in violation of the allocation regulations. As stated above, Texaco consignees, as wholesale purchaser-resellers, were entitled to allocations from Texaco. Based upon the

---

consignee commissions and jobber margins. According to the commentors, the difference between a jobber margin and a consignee commission allowed jobbers to provide certain services without any aid from the supplier. Consignees, on the other hand, received a smaller commission, but their supplier performed these services for them. *See* Hickey testimony, Tr. at 121–22.

[18] The NATW also claims that Texaco discriminated in the price it charged consignees for purchases made for their "own account." "Own account" purchases are different from a consignee's allocation in that these gallons were purchased and resold by a consignee with a margin, instead of a commission, earned on the transaction. According to the NATW, Texaco consignees should have been charged the same price as other wholesalers for these purchases. Instead, consignees allege that they were charged the dealer tank wagon price on these purchases, which was approximately $0.04 per gallon higher than the price charged to wholesalers. *See* November 16, 1989 NATW letter from Thomas West to the OHA. These "own account" gallons were actually wholesale purchases under the regulations and therefore different from consigned gallons. Consignees are entitled to claim a refund on these purchases in the same manner as all resellers, even without the adoption of a presumption of injury for consignees.

[19] The NATW claims that the effect of the 5-year Plan can be seen in Texaco's treatment of consignee commission. At the start of controls, Texaco consignees received a commission of $0.0235 per gallon. This commission was raised to $0.0285 in May of 1974. However, in June of 1977, the commission was reduced to its previous level of $0.0235. This action, the NATW contends, came at a time that the regulations were modified to allow refiners to pass through the cost of increased non-product costs incurred by the consignee. Eventually, the regulations were modified to allow a refiner to pass through the entire cost of increased consignee commissions in order to encourage refiners to raise consignee commissions. According to the NATW, the decrease in a consignee commissions was a deliberate attempt to force consignees out of business.

[20] Contrary to the NATW's position, Texaco was not required to treat consignees the same as resellers under the price regulations. Nothing in either the regulatory history of the price controls or the Decisions of this Office, including the *Nere* Decision, support that position. First, the *Nere* Decision was a *Proposed* Exception Decision and not a final order issued by this Office. Furthermore, that case never resulted in a final adjudication since the parties requested dismissal. *See* letter from Richard W. Dugan, Associate Director, OHA, to Gregg Potvin, Attorney for J.A. Nere Co., Case No. DEE–8091 (July 10, 1981). Additionally, an exception decision as distinguished from a Remedial Order, is not a general regulatory interpretation, but a case-specific determination of an equitable nature to allow actions not otherwise permitted under the regulations. Finally, the proposed *Nere* exception decision does not in any way indicate that *Nere* was covered by the price regulations, but only that it would have been equitable to treat the firm as a jobber.

information submitted in this proceeding, it appears likely that Texaco improperly failed to offer a large majority of Texaco consignees the full allocation to which they were entitled under 10 CFR part 211. Finally, the Texaco consignees have shown that they were injured by these alleged actions which resulted in a decrease in gross commissions, and therefore in their gross revenues. This is confirmed by the survey information submitted by the NATW which shows that, on average, consignees lost a significant percentage of their base period allocations by the end of the period of controls. *See supra*, n.16.

Additionally, we conclude that there is good evidence of alleged violations by Texaco of the normal business practices rule, thereby reducing the ability of its consignees to receive their allocations.[21] As the NATW has testified, Texaco's alleged refusal to continue providing normal business services often encouraged a consignee's accounts to find another supplier. Once an account elected not to take the product from the consignee, Texaco then generally did not allow the consignee to reassign the allocation and it removed those gallons from the consignee's monthly entitlement. Over time, the removal of such services resulted in the reduction of a consignee's allocation and therefore was a contributing factor to the injury experienced by consignees.

Since the alleged allocation violations and the resultant injury experienced by the consignees were both widespread and substantial, we have concluded that a presumption of injury for consignees is appropriate. Refund claims filed by consignees should be evaluated using certain presumptions that have generally been available to other claimants in Subpart V proceedings. The use of presumptions in refund cases is specifically authorized by the Subpart V regulations. 10 CFR 205.282(e). In accordance with this provision, we adopted a presumption for consignees in a prior proceeding where this presumption was warranted. *See Gulf*, 16 DOE at 88,739 (10 percent of the volumetric amount awarded to consignees). We have also adopted refund presumptions for allocation claimants where such presumptions were warranted by the record. *See Elias Oil Co.*, 19 DOE ¶ 85,061 (1989) (*Elias*) (volumetric refund based upon volume received by claimant); *Gibbs Industries, Inc.*, 14 DOE ¶ 85,460 (1986) (*Gibbs*) (volumetric refund based upon volume not received by claimant). The presumptions for consignees we are adopting in this proceeding are designed to permit consignees to participate in the refund process at a reasonable cost, and to enable the OHA to consider refund claims by consignees in the most efficient way possible given its limited resources. If we were not to utilize presumptions for consignees in this proceeding, we anticipate that we would receive hundreds of firm-specific allocation-based refund claims from Texaco consignees. These claims would be complex and multifaceted, and, in view of the time that has elapsed since the consent order period, the necessary showings would be extremely difficult for an individual consignee to make in the context of a refund application. Furthermore, analysis of many complicated, non-presumption allocation claims would require the OHA to devote a disproportionate effort to a relatively small percentage of refund applications in the Texaco proceeding.[22]

In determining the level at which consignees are to be granted presumption refunds, we have considered all of the factors which have contributed to the injury experienced by consignees. None of these factors alone is determinative of the appropriate presumption levels. However, taken collectively, we have concluded that these factors justify adopting the following presumptions for consignees in this proceeding.[23]

First, we will adopt a volumetric presumption to allocate refunds to consignees who demonstrate that they are eligible to receive refunds. Under this methodology, we will presume that all consignees experienced an equal amount of loss per gallon as a result of not receiving their full allocation entitlements from Texaco during the consent order period. As we have stated in prior cases, allocating refunds on a volumetric basis is efficient, treats all firms similarly, and avoids detailed examination of the impact of the violation on each firm. *See Amoco*, 10 DOE at 88,199.

Utilizing the volumetric refund presumption will also further our goal of granting restitution to as many claimants as possible by simplifying the process through which refund applications are prepared and analyzed. In this case, the volumetric amount will be the per gallon volumetric amount applicable to all claimants in the Texaco refund proceeding. Successful consignee-claimants generally will be awarded refunds based upon the volume of Texaco product consigned to them multiplied by the volumetric rate. We recognize that establishing a refund methodology using volumes not supplied by Texaco would also be reasonable. *See Gibbs*. However, in this case the number of gallons not supplied is not readily determinable for most refund applicants.[24] Under similar circumstances in the *Elias* proceeding, we determined that each allocation claimant's allocable share would be calculated by multiplying the volumetric refund amount by the number of gallons purchased. Using the *Elias* methodology in the present proceeding is reasonable since it eliminates the need to establish a separate volumetric rate for consignees. This method is also justified since the survey data submitted by the NATW shows that consignees generally failed to receive the same percentage of their allocations regardless of the size of their allocation entitlements.[25]

[21] We do not, however, accept the NATW's allegation that the DOE previously determine that Texaco violated the normal business practices rule. The NATW refers to an Amended Proposed Remedial Order (APRO) (Case No. 630R00116) issued on December 26, 1978 to support the proposition that Texaco's pricing practices towards consignees violated normal business practices and were discriminatory. However, this APRO was not a final determination by the DOE. After consideration of Texaco's objections, the DOE issued a final Decision and Order dismissing the claims that formed the basis of the APRO. *See Texaco Inc.*, 6 DOE ¶ 83,010 (1980). Nevertheless, for the pruposes of this proceeding, there is sufficient evidence that removal of these services occurred, and that it resulted in a decrease in consignee's allocations.

[22] Since the implementation of the Subpart V regulations in 1979, the OHA has granted only eight non-presumption allocation claims. *See Marathon/RFI* Appendix B. In contrast, according to Texaco, in 1975 it had 1,005 bulk plant consignees and 181 tank-truck dealer consignees. See 5-year Plan at 15. The NATW estimates that a significant percentage of these will seek refunds in this proceeding. *See* letter from Thomas West, Executive Director, NATW, to Victor Miller, OHA Staff Analyst (November 20, 1989).

[23] A consignee who does not elect to use these presumptions may still attempt to obtain a non-presumption allocation refund on the basis of the methodology used in a number of prior allocation cases. However, that claimant must submit firm-specific information demonstrating that it meets the standards for an allocation refund; it cannot rely on the generalized information submitted by the NATW in this proceeding. Furthermore, if a non-presumption claimant submits information that indicates it was not subject to Texaco's alleged allocation violations, its allocation refund claim will be denied and it may not receive a presumption refund instead. *Cf. Marathon/RFI* (allocation claim denied since consent order firm's failure to supply claimant was not improper).

[24] Texaco has informed us that while it does not have any records of volumes not consigned, it does have information regarding the amounts consigned and delivered to individual consignees during the consent order period. Texaco has further stated that it will attempt to provide the consigned volume information to any former consignee who can inform Texaco of its consignee "station number."

[25] To the extent that there were some slight differences, they show that consignees with larger

Continued

Accordingly, the allocable share of a consignee-claimant will be based upon the volume of Texaco product consigned to it multiplied by the volumetric rate.

We will also apply the small claims and medium-range presumption of injury to consignees. These presumptions are appropriate for consignee-claimants for the same reasons that have led to their adoption for resellers. Consignees with allocable shares of less than $10,000 in all likelihood do not have the resources necessary to allow them to demonstrate their injury. The small claims presumption will allow them to receive refunds without a detailed demonstration of injury. Furthermore, larger consignees, with potential refund claims of over $10,000, were likely to have been in a position to offset some of the effects of Texaco's alleged actions. *See, e.g.*, Abercrombie testimony, Tr. at 179–80. Therefore, these claimants should not be able to receive their full allocable share unless they can demonstrate that they were injured. *See infra*, Part III.

As a result of our finding that consignees are eligible for refunds, it is necessary to modify the volumetric refund amount in this proceeding. In the PDO, we proposed a volumetric rate of $0.001136 per gallon. This rate was determined by dividing the amount of money available ($120,000,000) by the total estimated volumes of eligible products sold by Texaco. However, we have determined that the addition of consignees to the refund process should add to the total volume of products eligible for refunds in this proceeding. According to Texaco, 7,280,957,181 gallons of covered products were distributed through Texaco consignees. *See* letter from Stephen Bard, General Attorney, Texaco Inc. to Richard W. Dugan, Associate Director, OHA (November 21, 1989). Therefore, we will adjust the volumetric to take into consideration the 7,280,957,181 gallons of eligible consigned products. In addition, Texaco has informed us of two other, relatively minor refinements to the figures it previously provided us for the total volume of products it sold during the controls period.[26] After making these adjustments, the volumetric refund amount for this proceeding is calculated to be approximately $0.001058 per gallon. For administrative efficiency, we have rounded the volumetric amount to $0.0011 per gallon.

C. Requirements for Applications Filed by Representatives

As we have noted in the PDO, the OHA has received a proliferation of refund applications filed on behalf of potential applicants by "representatives," i.e., refund services, consulting firms and attorneys. These applications have often not met the standards of submitting proper refund claims under subpart V or this Office's procedures. Our evaluation of these claims has frequently uncovered errors, inaccuracies and even deliberate misstatements. In an attempt to deal with these problems, we proposed to adopt measures to inquire into the competency, knowledge and procedures of the representatives and to curb actions that have led to improper and inaccurate filings in past proceedings. These proposals were summarized in Part I, *supra*. We sent PDO two representatives that have previously appeared regularly before this Office and we have received numerous comments. In sum, commentors object to each and every aspect of our proposal. The commentors, as a whole, contend that our proposals are unnecessary, duplicative of current requirements, unworkable, and contrary to traditional attorney-client practices.

Initially, some of the commentors contend that the term "filing service" as used in the PDO is ambiguous. William Bode and Associates (Bode), a law firm, claims that the term filing service is vague and overly inclusive, thereby requiring that anyone filing an application conform to these requirements. *See* Bode Comments at 1–2 (April 25, 1989).

A significant number of those commenting contend that these requirements are unnecessary. For instance, Bode states that "the number of firms which may have followed questionable practices is quite small, and . . . it is more appropriate for the OHA to take individual corrective action, as it has been doing, than it is to burden all applications filed by representatives with these onerous, additional requirements." *Id.* at 2. This sentiment is echoed by another attorney, Michael O'N. Barron (Barron), who asserts that other similar efforts "to discourage people from using refund services were totally ineffective.' Barron Comments at 5 (April 25, 1989).

Additionally, the attorneys who have submitted comments argue that the mechanisms to ensure honest and proper representation on their part are already in place, making the OHA requirements unnecessary. According to these commentors, the American Bar Association Code of Professional Responsibility and individual state bar rules regulating the professional conduct of attorneys prohibit filing claims without the consent of the claimant and engaging in other forms of misrepresentation. Such actions, under those rules, may ultimately result in disbarment or other disciplinary actions. According to these commentors, the possibility of such sanctions is more of a disincentive to submit false information in a refund proceeding than the proposed OHA procedures.

Other commentors contend that our proposed requirements, particularly the submission to this Office of information regarding the representative's operations, would violate the confidentiality of the attorney-client relationship. In particular, Robert P. Williams, II (Williams) argues that the fee arrangements a lawyer has with clients is confidential and cannot be waived by the lawyer. Additionally, he states that since an attorney is generally authorized to sign pleadings on behalf of a client, attorneys should be permitted to sign refund applications on behalf of potential applicants in this proceeding. See Williams Comments at 3 (April 4, 1989).

Many commentors complain that one or more of the proposed requirements are unworkable. These commentors object chiefly to our suggestions that representatives (i) post a bond to ensure the distribution of the refunds to their clients and (ii) submit information regarding their practices, including solicitation practices, before the filing of applications. They also object to the proposed requirement that applications signed before the issuance date of the final Decision and Order contain a recertification of the claimant's intention to retain the services of the representative and that the claimant has and will not file a duplicative claim.

While some of the commentors' arguments have weight, we do not find them controlling here. Many are based purely on self-interest considerations. These commentors generally contend

---

allocations tended to be denied slightly higher percentages of their entitlements. There was no evidence in the survey indicating that consignees with smaller entitlements were denied gallons to a greater proportional extent than larger consignees. Thus, granting larger allocation refunds to consignees with larger allocation entitlements is reasonable.

[26] According to Texaco, its original total sales volume figure did not include volumes sold in Puerto Rico during the controls period. However, Texaco has recently located records that allow it to estimate its total applicable sales in that region. These sales have now been added to the total sales volume figure in making our calculation. Additionally, Texaco has discovered that it inadvertently included sales made to its Jefferson Chemical affiliate in the total volume calculation. We have now reduced the total sales volume figure accordingly.

that the problem is limited and that duplicative applications, inaccuracies, and the other problems we have identified are not the result of willful malfeasance but instead result from carelessness on the part of the applicant or other representatives, not themselves. *See* Barron testimony, Tr. at 44; testimony of Eric T. Small (Small), Tr. at 215–218. They also generally contend that they commit no errors, only other representatives do. None of these comments gives us comfort. As we stated in the PDO, we view the growing problems caused by the practices of some filing services with great concern. *See* PDO, 54 FR at 13426 (citing *Ken's Professional Waterproofing*, 18 DOE ¶ 85,771 (1989), and *Herbert L. Tanner*, 18 DOE ¶ 85,105 (1988)). Whether or not errors have been committed deliberately, problems resulting from the practices of some representatives have made the efficient administration of subpart V refund proceedings much more difficult, take disproportionate time, and operate to the detriment of most claimants and responsible representatives. Therefore, we believe that further action is needed to ensure that the subpart V process continues to function effectively.

This Office has the responsibility for overseeing the actions of representatives that appear before it. *See* 10 CFR 205.3. Under subpart V, OHA has a mandate to provide restitution to "injured persons in order to remedy the effects of a violation of the regulations of the Department of Energy." 10 CFR 205.280. Representatives are not "injured persons" entitled to restitution in this proceeding. They differ from refund applicants in that they have no claim in these proceedings except on behalf of their clients. Therefore, it is essential that all representatives obtain their authorization explicitly from claimants who have a reasonable understanding of both the role a representative plays for them in gaining their refund and their right to appear before this Office without the assistance of another party if they so choose. Without such an understanding, a potential applicant will have relinquished a portion of its restitutionary claim based upon inaccurate or misleading information. Our proposals here seek to further the important ends of providing restitution to those who were injured by Texaco's alleged violations and ensuring that representatives are operating to the largest extent possible in the interests of the applicant. These proposals were made with the intention of ensuring that the subpart V process continues to provide effective and equitable restitution to those injured by petroleum overcharges.

Furthermore, it should be noted that in the period since we have issued the PDO, we have experienced additional problems caused by the practices of some representatives. We received testimony at our public hearing which indicated that, despite our warnings to the contrary, early solicitation of potential refund applicants was occurring. *See* Small testimony, Tr. at 217. Early solicitation of potential applicants creates serious problems in the refund process. Such solicitations often occur well in advance of the actual date on which claimants may file applications. This often results in applicants erroneously concluding that they must take immediate action in order to receive a refund, which increases the pressure for an applicant to engage the services of one or more representatives.[27] Additionally, and even more importantly, because these solicitations occur before final procedures have been established by this Office, they often contain misleading information and reflect an ignorance of the specific requirements for the refund proceeding for which the applicant is being solicited.[28]

Moreover, since the Texaco PDO was issued, we have been forced to deny a representative the privilege of appearing before this Office due to a gross pattern of continued errors and misrepresentations in the applications that it prepared and filed. *See P.A.D., Inc.*, 19 DOE ¶ 85,228 (1989). In the case of another filing service, we have determined that its questionable practices and carelessness justified mailing the refund checks directly to the applicant instead of the filing service. *See, e.g., Exxon Corp./Balala's Exxon*, 19 DOE ¶ 85,399 (1989) (*Exxon/Balala's*). We have received numerous duplicative applications, some filed by different representatives on behalf of the same applicant.[29] *See, e.g., Exxon Corp./Walline's Exxon*, 19 DOE ¶ 85,698 (1989). Collectively, these examples indicate that we continue to encounter problems with claims filed by representatives. We therefore believe that further measures are necessary to prevent some of these problems.

We also believe that the requirements we adopt should apply to all applications filed by anyone other than the individual who actually purchased the products from Texaco. The term "filing service" is a generic one and it will be used in this proceeding to refer to any individual or company that intends to file 10 or more Applications for Refund in the Texaco refund proceeding based upon purchases made by others from Texaco. It does not, as several commentors have suggested, apply solely to those firms whose businesses consist only of filing refund applications. Therefore, both lawyers and non-lawyers are considered "filing services" for the purposes of this proceeding and shall comply with the requirements that we will adopt.[30]

In this case, no restriction of any sort is being placed on any filing service. Instead, we simply seek information regarding a representative's general practices of gaining clients, preparing applications, etc. Such information requests are well within the OHA's authority to obtain information as to the identity of the applicant and to investigate refund applications fully. *See* 10 CFR 205.284 (b) and (c). This

---

[27] This conclusion is supported by the experience of the California Service Station Association (CSSA). According to the CSSA:

(C)onfusion arises out of the fact that refund companies are contacting the dealers before the settlement is finalized or notification or forms have been sent out. The first time that a dealer is ever aware that he might be eligible for a refund is when he is contacted by a refund company. The dealers think that they have overlooked the notification from the DOE or were never notified * * * (S)ome dealers, thinking that they might have forgotten to file, agree to have companies do it for them. Sometimes they agree to give as much as 30 percent of their refund to the company. Then, when they find out that they could have filled out the forms (themselves), directly from the DOE, they sometimes feel as if they have been taken to the cleaners.

Letter from Art Boswell, CSSA, to Victor Miller, OHA (October 17, 1989).

[28] In addition, many of the solicitation letters seek authorization for several proceedings at once and are very confusing. On several of these "mass" solicitations, the specific per gallon refund amount an applicant may expect to receive is not listed. Without such information, a potential claimant cannot evaluate whether it is in his interest to use the services of the representative or file on his own. Other solicitations regarding only the Texaco refund proceeding contain information that is now inaccurate, such as the previous volumetric amount, the information necessary for filing an application form, and the date submissions will be accepted by the OHA.

[29] For example, in the *Exxon* proceeding, we have dismissed almost 300 duplicative claims, many of which have been filed by filing services as a result of careless practices and early solicitation. *See, e.g., Exxon Corp./Star Exxon*, 19 DOE ¶ 85,403 (1989).

[30] Any representative that believes it cannot comply with any of the procedural measures that we adopt due to a conflict with the requirements of state law should indicate its objection in a letter to our Office. We will review and issue determinations on these requests individually.

information is useful to both the OHA and the applicant because in certain circumstances we have advised a representative that its solicitation was factually incorrect or potentially misleading to applicants. Additionally, in other cases where we find that a representative has misled clients or failed to perform its duties as a representative responsibly and competently, we have ordered refund checks to be sent directly to the applicant, *See Exxon/Balala's; Gulf Oil Corp/E-Z Shop Food Store,* 20 DOE ¶ 85,029 (1990) (refund sent directly to applicant because a representative provided no procedural or substantive service). In some instances our attempts to protect the interests of the applicants have been hampered by the fact that adequate information regarding practices of the filing services is not available to the OHA unless a disgruntled applicant chooses to inform our Office. Therefore, we have determined that the proposal that all representatives submit general information regarding their practices is reasonable and appropriate.[31]

We will also require that each application be signed by the applicant. We are unwilling to accept special or generalized powers of attorney in refund proceedings before this Office. The increasing problems that have appeared as a result of applications signed by filing services, including some attorneys, lead us to strictly construe the regulations that govern subpart V proceedings. Subpart V expressly requires that each application must be "signed by the applicant." 10 CFR 205.283(c). This section further requires *each applicant* to swear that all information in the application is true and accurate to the best of its knowledge and belief, and to reveal whether any other claim has or will be filed in this proceeding. In order to ensure that the applicant has understood these requirements and the penalties for filing an improper or duplicate claim, we will require the applicant, or a responsible corporate officer of the applicant firm, to sign the application. This signature requirement allows the OHA to evaluate each application with confidence in the veracity of its contents.

Furthermore, it is in the best interests of both the representative and the applicant, as well as the OHA, to have the applicant review and sign the application before it is submitted. By having the applicant sign the application form, both the applicant and the representative can avoid possible confusion, lessen the chances of an inadvertently filed duplicate application, and be assured of the accuracy and completeness of the information being submitted. This should be a normal procedure followed by any representative. Thus, we believe that a requirement that the applicant sign the application form will not pose an undue burden upon attorneys or other representatives in this proceeding.

We are therefore adopting the following proposals.[32] Each filing service shall, contemporaneously with its first filing in the Texaco proceeding, submit a statement indicating its qualifications for representing refund applicants and containing a detailed description of the solicitation practices and application procedures that it has used and plans to use.[33] This statement should contain the following information: [34]

(a) A description of the procedures used to solicit refund applicants in the Texaco proceeding and copies of any solicitation materials mailed to prospective Texaco applicants;

(b) A description of how the filing service obtains authorization from its clients to act as their representative, including copies of any type of authorization form signed by refund applicants;

(c) A description of how the filing service obtains and verifies the information contained in refund applications;

(d) A description of the procedures used to forward refunds to its clients;

(e) A description of the procedures used to prevent and check for duplicate filings.

Upon receipt of this information, we may suggest alteration of a filing service's procedures if they do not conform to the procedural requirements of 10 CFR part 205 and this proceeding.

Secondly, we will require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

Thirdly, in any case where an application has been signed and dated before the issuance of this Decision and Order, we will require a certification statement, signed and dated by the applicant after the date of the issuance of this Decision and Order. This certification should state that the applicant has not filed and will not file any other Application for Refund in the Texaco refund proceeding and that, after having been provided a copy of the OHA Information Sheet in this proceeding, it still authorizes that filing service to represent it.[35]

In addition, the OHA reiterates its policy to closely scrutinize applications filed by filing services. Applicants submitted by a filing service should contain all of the information indicated in this Decision and Order.[36] *See infra,*

[31] Due to the comments we have received, we have determined not to require detailed information regarding the fee arrangements between filing services and applicants. However, we may request such information if we discover problems with a fee arrangement during the course of the Texaco refund proceeding.

[32] We have concluded that the proposed requirement that firms post a bond or place funds in escrow is not necessary at this time to ensure the effective distribution of the Texaco consent order funds.

[33] This statement should be submitted under separate cover and reference the Texaco refund proceeding, Case No. KEF-0119.

[34] As several commentors have stated, this information with regard to some filing services has already been requested and received by this Office. *See* BMA Comments at 3. Therefore, any filing service that has had more than 10 Applications for Refund approved before the issuance of the Proposed Decision and Order in this proceeding (March 24, 1988) need not submit this information if it has already done so in another proceeding. Instead, such a filing service need only include a copy of the previous submission(s) responsive to items (a)-(e) and provide an update if its response to any of these questions has changed since it first submitted its information. However, in light of the importance of this information, it is prudent for all filing services to review their practices and inform the OHA of any alterations or improvements that may have been made.

[35] One commentor, BMA, contends that the recertification requirement would impinge upon the long standing relationship it has developed with the refund claimants it represents. BMA misunderstands the purpose of the recertification. It is not intended to question any legitimate authorization obtained by representatives, but to avoid duplicate filings. Since many representatives have obtained their authorization well in advance of the initiation of the Texaco refund proceeding, their clients may not be aware that a claim is being filed on their behalf. In any event, this requirement would not appear to affect BMA. As indicated above, the recertification requirement is only applicable if an application form is signed *before* the issuance date of the Texaco Decision and Order. According to BMA, its clients do not sign the application form until after the issuance date of the Decision and Order. *See* Bassman testimony, Tr. at 85.

[36] A filing service commentor has objected to the inclusion of the applicant's current name and address in the copy of every refund application which is routinely made available to the public in the OHA Public Reference Room. By disclosing this information, the commentor claims that other, disreputable filing services will use this information to resolicit applicants who have already filed claims. We, of course, recognize that resolicitation for the same proceeding is improper and would give rise to serious consequences. However, it would be inappropriate to withhold this information from the public. The name and address of a petitioner to this Office does not fall within the scope of the exemptions listed in the Freedom of Information Act. *See* 5 U.S.C. 552(b); 10 CFR part 1004(b).

Part III. Generally, if the applicant was a direct purchaser, the application should include a purchase volume schedule received from Texaco.[37] If the applicant has not received a volume schedule from Texaco and has attempted to obtain one by contacting Texaco, these efforts should be described in the application. Filing services should not file incomplete applications with the OHA. This practice may result in a delay in the processing of these claims, and possibly cause dismissal of the applications. Furthermore, the OHA stresses that in cases where there is a record of misrepresentation or gross incompetence by a filing service, the OHA may suspend the filing service pursuant to 10 CFR 205.3 or order that refunds be sent directly to the applicant.

D. Other Comments

We have received two other general comments regarding the distribution of the Texaco refined product pool. One commentor, Barron, contends that the $120 million refined products pool should be divided into two separate pools, one for purchasers of NGLs and NGLPs and another for purchasers of all other products. According to Barron, disputes involving the pricing of NGLPs and NGLs by Texaco accounted for a majority of the issues that were settled by the Texaco consent order. Therefore, Barron proposes that most ($114 million) of the refined product pool be set aside for purchasers of Texaco NGLPs and NGLs, with the remaining $6 million for purchasers of all other Texaco products.

There is no merit to Barron's argument. The Texaco consent order settles all regulatory violations alleged against Texaco, whether known or unknown at the time of settlement. The Texaco refund proceeding is therefore not limited to one or more groups of customers, or to products and time periods that were the focus of specific DOE enforcement proceedings. Rather, its purpose is to provide restitution to all claimants who purchased covered products from Texado during the consent order period. The use of a single, per gallon volumetric refund amount applicable to purchasers of all Texaco products reflects the fact that there has been no final determinations that Texaco overcharged its customers. Therefore, apportionment of the fund in the manner suggested by Barron would be inconsistent with the Texaco consent order and our procedures. In addition, it is not true that a large majority of Texaco's alleged violations occurred solely in sales of NGLs and NGLPs. The single refined product Remedial Order issued to Texaco involved allegations regarding Texaco's pricing of motor gasoline and distillates. This Remedial Order was issued in final form on April 11, 1986 and consisted of alleged violations of $142,783,783 in cost overrecoveries in the sales of these products. *See Texaco Inc.*, 14 DOE ¶ 83,016 (1987).

Additionally, several commentors contend that purchasers of Getty products during the period January 1, 1979 to January 27, 1981 should be granted refunds in the Texaco refund proceeding. According to these commentors, purchasers of Getty products during this period have never been given an opportunity to receive refunds because the previous *Getty* refund proceeding, 15 DOE ¶ 85,064 (1987), did not cover products purchased during that period. These commentors argue that since Texaco subsequently purchased Getty, refunds for these claimants should be made from the Texaco consent order fund. This argument is incorrect since Getty's alleged violations during the time period in question were covered by a second consent order between Getty and the DOE. *See* Notice of Proposed Consent Order, Getty Oil Co., 47 FR 20347 (May 12, 1982); Action on Consent Order with Getty Oil Co., 47 FR 31039 (July 16, 1982). This issue was therefore resolved before Texaco purchased Getty and is not relevant in this proceeding.

III. Refund Procedures for the Texaco Refined Product Pool

A. Standards for the Evaluation of Claims

This section sets forth the standards applicable to the evaluation of refund claims in the Texaco refund proceeding. From our experience with Subpart V proceedings, we expect that potential applicants generally will fall into the following categories: (i) End-users; (ii) regulated entities, such as public utilities, and cooperatives; (iii) refiners, resellers and retailers (collectively referred to as "resellers"); and (iv) consignees.

In order to receive a refund, each claimant will be required to submit a schedule of its purchases of Texaco refined petroleum products during the consent order period.[38] If the product was not purchased directly from Texaco, the claimant must establish that the product originated with Texaco.[39]

In addition, a reseller or consignee claimant, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Texaco's alleged regulatory violations. This showing will generally consist of tow distinct elements. First, a reseller claimant will be required to show, through credible, firm-specific data, that it has "banks" of unrecouped increased product costs beginning in November 1973 or the first month of the period for which a refund is claimed, through the date on which the product was decontrolled.[40] In addition, such a

[37] Texaco has agreed to make volume information available to potential claimants in this proceeding. Direct purchasers who do not receive this volume information can contact Texaco in writing to inquire as to whether such information is available. Requests should be mailed to: Texaco Inc., Attention: DOE Customer Refund Coordinator, P.O. Box 5080, Bellaire, TX 77402-5080.

When an applicant contacts Texaco, it should state its customer number(s) for which it is requesting volume information.

A filing service commentor suggests that OHA should allow it to receive its clients' volume information directly from Texaco. We do not agree with this self-serving proposal. Moreover, it presents a number of practical problems. Texaco should not be put in the position of determining the validity of a filing service's claim to represent former Texaco customers. That is the OHA's responsibility. In addition, if the Texaco volume information was released directly to a filing service instead of the applicant, the applicant might not be given the opportunity to determine whether this information is correct or should be supplemented with information from its records. Accordingly, Texaco will be requested to release volume information only to its former customers, and not to representatives.

[38] Although consignees did not actually *purchase* petroleum products from Texaco, we will refer to purchases made by resellers and volumes consigned to consignees as "purchases" in Part III of this Decision. Documentation of volumes for any direct purchaser, including consignees, consists of either (i) a volume schedule from Texaco showing an applicant's purchases which may be accompanied by any supplemental information if the applicant believes that this schedule is incomplete or inaccurate, or (ii) a schedule showing the volume of each product purchased from Texaco by the applicant in each month of the consent order period taken from the applicant's business records. Estimated volumes will be accepted only if actual volume figures are unavailable from Texaco's or the applicant's records, and the applicant provides reasonable estimates based upon a reliable source of information and clearly describes its estimation method.

[39] Indirect purchasers who establish that their purchases originated with Texaco will be eligible for a refund unless the direct purchaser has filed a refund claim and established that it did not pass through the alleged violations to its customers. *Compare Southern Union Co./Union Carbide Corp.*, 16 DOE ¶ 85,026 (1987) (full refund to indirect purchaser) *with Resource Extraction and Processing/Mobil Oil Corp.*, 15 DOE ¶ 85,145 (1986), *reconsideration denied*, 15 DOE ¶ 85,334 (1987) (no refund to indirect purchaser). As a result, applications from indirect purchasers will generally be considered only after evaluating the applications of their suppliers.

[40] Retailers and resellers of motor gasoline were required to maintain cost bank data only until July 15, 1979 and April 30, 1980, respectively. Therefore, in showing injury with respect to their purchases of motor gasoline, such claimants will not be required to submit cost bank material subsequent to those dates. However, for each month of the respective banking period through January 1981, resellers will have to show that their margin was less than the applicable fixed margin specified in 10 CFR 212.93.

claimant must demonstrate that market conditions would not have allowed those costs to be passed through to its customers. This showing may be made in a competitive disadvantage analysis, which compares the price paid by the applicant with the average market price for the same product at the relevant level of distribution. *See Vickers Energy Corp./Hutchens Oil Co.*, 11 DOE ¶ 85,070 at 88,105 (1983).[41]

A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the alleged overcharges or is eligible for a refund of less than the applicable presumption-level amount, will not then be eligible for a presumption-based refund. Instead, such a claimant will receive a refund which reflects the level of injury established in its Application. No refund will be approved if its submission indicates that it was injured as a result of its purchases from Texaco. *See Exxon*, 17 DOE at 89,150 n.10.

1. *Presumptions for Claims Based upon Refined Product Purchases.* As we discussed above and in the PDO, refunds will generally be made on a pro-rata or volumetric basis.[42] Under the volumetric approach, a claimant's "allocable share" of the refined product pool is equal to the number of gallons purchased from the consent order firm during the applicable consent order period times the per gallon refund amount. In the present case the volumetric is $0.0011. In addition, each applicant is entitled to receive a proportionate share of the accrued interest.[43] We will also adopt the presumptions set forth in the PDO with the exception of the proposed presumption of non-injury for consignees, for whom we have adopted a new presumption as explained above. These presumptions will simplify the refund process and will help ensure that refund claims are evaluated in the most efficient and equitable manner possible. In addition to the volumetric presumption, we also adopt a number of presumptions regarding injury for claimants in each category listed below.

a. *End-users.* End-users of Texaco refined petroleum products, i.e., consumers, whose use of the product was unrelated to the petroleum business, are presumed injured and need only document their purchase volumes from Texaco during the consent order period to be eligible to receive their full allocable share.

b. *Refiners, Resellers, Retailers and Consignees Seeking Refunds of $10,000 or Less.* Reseller and consignee claimants, whose allocable share is $10,000 or less, i.e., who purchased 9,090,999 gallons or less of Texco refined petroleum products during the consent order period, will be presumed injured and therefore need not provide a further demonstration of injury, besides documentation of their volumes, to receive their full allocable share.

c. *Medium-Range Refiner, Reseller, Retailer and Consignee Claimants.* In lieu of making a detailed showing of injury, a reseller or consignee claimant whose allocable share exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 50 percent of its allocable share up to $50,000.[44] An applicant in this group will only be required to provide documentation of its purchase volumes of Texaco refined petroleum products during the consent order period in order to be eligible to receive a refund of 50 percent of its total volumetric share, or $10,000, whichever is greater.

d. *Regulated Firms and Cooperatives.* We have determined that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement, needs only to submit documentation of petroleum product purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm, or a cooperative whose allocable share is greater than $10,000 will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund.[45]

e. *Spot Purchasers.* We have adopted a rebuttable presumption that a reseller that made only irregular or sporadic, i.e., spot, purchases from Texaco did not suffer injury as a result of those purchases. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Texaco. In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped through the draw down of banks. *See Quaker State Oil Refining Corp/Certified Gasoline Co.*, 14 DOE ¶ 85,465 (1986).

2. *Allocation Claims.* We may also receive claims based upon Texaco's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in Subpart V implementation Decisions such as *Amoco*, 10 DOE at 88,220, and refund application cases such as *Mobil Oil Corp./Reynolds Industries Inc.*, 17 DOE ¶ 85,608 (1988), *Marathon/RFI*, and *Tenneco/Kellermyer*. These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was

[41] Since a consignee, unlike a reseller, was not subject to the reseller price rule, it cannot meet the injury requirements we have established for resellers. Instead, a consignee that accepts the volumetric methodology, but wants to show that it was injured by more than the medium-range presumption amount, must demonstrate the extent to which it was forced to reduce the selling price of a product, and thus its commission as a result of competitive pressures. One way of showing that a failure to receive a full commission was caused by competitive factors is to present evidence indicating the price Texaco initially established for the consignee's customers was more than the average market price in each month.

[42] Because we realize that the impact on an individual claimant may have been greater than the volumetric refund amount, we will allow any purchaser to file a refund application based upon a claim that it experienced a "disproportionate share" of Texaco's alleged overcharges. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984). To the extent that a claimant makes this showing, it will receive a refund above the volumetric refund level. In computing the appropriate refund amount, we will prorate the alleged overcharge amounts by the ratio of the Texaco consent order amount as compared to the aggregate overcharge amount alleged by the ERA. *See Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319 (1989) *(Amtel/Whitco)*.

[43] In addition, as in previous cases, we have established a minimum refund amount of $15.00. We have found through our experience that the cost of processing claims for less than $15.00 outweighs the benefits of restitution in those cases. *See, e.g., Mobil*, 13 DOE at 88,852.

[44] That is claimants who purchased between 9,090,909 gallons and 90,909,090 gallons of Texco refined petroleum products during the consent order period may elect to utilize this presumption. Claimants who purchased more than 90,909,090 gallons may elect to limit their claims to $50,000.

[45] A cooperative's sales to non-members will be treated in the same manner as sales by other resellers. *See Total Petroleum/Farmers Petroleum Cooperative*, 19 DOE ¶ 85,215 (1989).

obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury. [46]

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Texaco may have had to the alleged allocation violation. *See Marathon/RFI.* In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocaton violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than Texaco. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the portion of the Texaco consent order amount that the agency attributed to allocation violations in general and to the specific allocation violaton alleged by the claimants. Finally, since the Texaco consent order reflects a negotiated compromise of the issues involved in the enforcement proceeding against Texaco and the consent order amount is less than Texaco's potential liability in those proceedings, we will prorate those allocation refunds that would otherwise be disproportionately large in relation to the consent order fund. *Cf. Amtel/ Whitco.*

B. Refund Application Requirements

We will now accept Applications for Refund from purchasers of refined petroleum products sold by Texaco during the period between March 6, 1973, the date that Texaco's sales became regulated under Special Rule No. 1, and January 27, 1981. There is no specific application format that must be used. However, a suggested application form for applicants in the Texaco refund proceeding is set forth in Appendix A to this Decision and Order. Retailer and reseller-retailer applicants should file separate forms (with supporting volume schedules) for each retail station for which a refund is requested. [47] All Applications for Refund should contain the following information:

(1) A conspicuous reference to "Texaco Refund Proceeding—Case No. KEF–0119" and the name and address of the applicant during the period for which the claim is filed, as well as the name of the person to whom the refund check should be made out and the address to which the check should be sent. The application should also contain the current name, mailing address and telephone number of the applicant, if it is different from the above.

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the Application.

(3) The use(s) of the Texaco product(s) by the applicant, e.g., whether the applicant was a refiner, petroleum jobber, gas station, consumer, consignee, public utitlity, or cooperative.

(4) If the applicant was a direct purchaser, a copy of a volume schedule prepared by Texaco. If such a record is unavailable, or the applicant was an indirect purchaser, monthly schedules of the applicant's purchases of each refined petroleum product that it purchased from Texaco from March 6, 1973 through the date of decontrol of that product (see p. 3 of suggested application form for decontrol dates) may be submitted. The applicant should indicate the source of this volume information. Monthly schedules should be based upon actual, contemporaneous business records. If such records are not available, the applicant may submit estimates provided that those estimates are reasonable and the estimation methodology is explained in detail.

(5) If the applicant was supplied directly by Texaco, it should provide its Texaco customer number. If the applicant was an indirect purchaser, it should submit the name, address and telephone number of its immediate supplier and indicate why it believes that the covered product was originally sold by Texaco.

(6) If the applicant is a refiner, reseller, retailer or consignee whose volumetric share exceeds $10,000, it must indicate whether it elects to receive as its refund the larger of $10,000 or 50 percent of its allocable share up to $50,000. If it does not elect to use the presumption, it must submit a detailed showing that it was injured by the alleged overcharges. *See supra* Part IIIA.

(7) A statement whether the applicant or a related firm has filed, or authorized any individual to file on its behalf, any other refund application in the Texaco proceeding, and if so, an explanation of the circumstances surrounding that filing or authorization. [48]

(8) If the applicant is or was entirely or partly owned by Texaco, it should explain the nature of the affiliation. Affiliates or subsidiaries of Texaco are presumptively held not to have been injured since their receipt of a refund would allow the consent order firm to benefit from this proceeding. *See, e.g., Marathon Petroleum Co./EMRO Propane Co.*, 15 DOE ¶ 85,288 at 85,528 (1987). This presumption applies both to firms affiliated with Texaco during the consent order period but no longer affiliated with the firm and firms that have become affiliated with Texaco after the consent order period but before the payment date (March 10, 1988). [49]

(9) A statement indicating whether the applicant owned the business that purchased the products from Texaco during the entire portion of the period for which it requests a refund. If not, it should indicate the name and address of the firm that made those purchases, the date of the purchase/sale of the business and an explanation of why the applicant believes it is entitled to a refund. [50]

(10) The Application should also contain the following statement signed by the individual applicant or a responsible official of the business or organization applying for a refund:

"I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that

[46] In view of the fact that the presumption of injury we have established for consignees is based upon alleged violations by Texaco of the allocation regulations, consignees are not eligible for a separate allocation-based refund if they elect a presumption-level refund.

[47] Resellers, consignees and end-users are encouraged to use only one application form for their various operations conducted under the same name, but should list separately the volumes of each refined petroleum product. In the case of consignees, separate volume schedules should be used for consigned and purchased ("own account") gallons.

[48] If duplicate Applications containing this statement are filed, both Applications may be summarily denied or dismissed. *See Exxon Corp./ William H. Abbott*, 18 DOE ¶ 85,406 (1988); *Getty Oil Col./Dale Gas & Oil Co.*, 18 DOE ¶ 85,376 (1988).

[49] For a list of identifed Texaco affiliates that will be ineligible under this presumption, see Appendix C to this Decision and Order.

[50] The OHA has previously held that the party that actually purchased the products from the consent order firm was in all likelihood the party injured by any alleged overcharges and thus the proper recipient of a Subpart V refund, unless the purchaser was a corporation whose stock was sold or the right to a refund was otherwise explicitly transferred. *See, e.g., Gulf Oil Corp./Strubes Propane, Inc.*, 16 DOE ¶ 85,314 (1987); *Eastern of New Jersey/Reheis Chemical Co., 16 DOE ¶ 85,056 (1987).*

the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room."

All Applications must be sent to:

Texaco Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585

In addition, each filing service should comply with the requirements specified in Part IIC *infra*. All Applications for Refund should be filed in duplicate (the original and one complete copy) and be postmarked no later than February 28, 1991.[51]

[51] Any applicant who believes that its Application for Refund contains confidential information must indicate so on the first page of the Application and submit two additional copies of the Application with the confidential information deleted, together with a statement indicating why the information is alleged to be confidential. An applicant may request that confidential information be withheld from disclosure, but the OHA retains the right to make its own determination with regard to any claim of confidentiality. *See* 10 CFR 205.9(f)(2). In view of the length of time that has elapsed since the end of the price control period covered by the Texaco consent order, it will be difficult for an applicant to establish that the information that it submits is exempt from public disclosure under Exemption 4 of the Freedom of Information Act. *See Vinson & Elkins*, 9 DOE ¶ 80,150 (1982).

C. Distribution of Product Funds Remaining after First Stage

Any refined product funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1988 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any refined product pool funds in the Texaco consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured Texaco customers will be distributed in accordance with the provisions of PODRA.

It is therefore ordered that:

(1) Applications for refined product refunds from the funds remitted to the Department of Energy by Texaco Inc. pursuant to the consent order finalized on August 29, 1988 may now be filed.

(2) Applications for Refund for funds from the refined product pool must be postmarked no later than February 29, 1991.

Dated: March 5, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix B

BILLING CODE 6450-01-M

Suggested Format for Application for Texaco Refund – RF 321

RF 321 -

DOE use only

1. Name of Applicant Firm during refund period (3/73-1/81): _____

Address during refund period: _____

_____

_____

2. To whom should refund check be payable? _____

Address to which check should be sent: _____

_____

_____

Contact Person: _____

Telephone No.: ( ) _____

3. Type of Applicant: (Check all applicable categories)

Gas Station_____ Consignee _____ Petroleum Jobber_____ Public Utility_____Cooperative_____

Consumer_____ Other_____
(please specify business) (please specify)

4. (a) Total gallonage for which refund is requested: _____
(Enter total gallons here)

(b) Product(s) (e.g., gasoline, propane): _____

(c) Source of your gallonage information: Attached purchase schedule from Texaco_____
(If estimates, explain method on separate sheet.) Own Records (Specify)_____

5. If you are a petroleum marketer (refiner, reseller, or retailer) or consignee and the total gallonage of your firm and all affiliated entities multiplied by $0.0011 exceeds $10,000, (purchases of 9,090,909 gallons) do you elect 50 percent of that amount or $10,000, whichever is greater (see Information sheet questions 7-8)?

Yes ❑ No ❑ Not Applicable ❑

If you do not elect the 50 percent presumption of injury method, or if you are requesting a refund greater than $50,000, attach the required "injury" showing. (see the Decision & Order for details on the injury showing required.)

(Check One)

6. Was the product you bought Texaco-branded? Yes ❑ No ❑

7. Were you supplied by Texaco directly? Yes ❑ No ❑

If yes, please provide Texaco customer or consignee number(s) here_____. If no, (i)attach an explanation of why you believe the product was sold by Texaco and (ii)include the name and address of the person or firm from which you purchased the product.

8. Is (was) your business owned all or in part by Texaco? If yes, please explain. Yes ❑ No ❑

9. Have you or a related firm filed any other application for Texaco refund? If yes, attach an explanation. Yes ❑ No ❑

10. Have you or a related firm authorized any individual(s) or firms, other than those identified on this form, to file an application on your behalf in this Texaco refund proceeding? If yes, attach an explanation. Yes ❑ No ❑
NOTE: YOU ARE PERMITTED TO FILE ONLY ONE APPLICATION FOR THE SAME PURCHASES.

11. Were you the owner of the retail outlet or other business that made the purchases from Texaco for which you are applying for a refund? If not, explain why you believe you are entitled to a refund for those purchases and provide the name and address of the person or firm that made those purchases. Yes ❑ No ❑

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

_____ Date

_____ Signature of Applicant

_____ Name of Applicant (Print)

_____ Title

Current Applicant Mailing Address

Street:_____

_____

City:_____ State:___ Zip:_____

Phone:_____

SCHEDULE OF PURCHASES

NOTE: YOU DO NOT NEED TO COMPLETE THIS PAGE IF YOU ATTACH THE PURCHASE VOLUME SCHEDULE PROVIDED BY TEXACO.

Name of Applicant: _____ **RF321-**

MONTHLY PURCHASE VOLUMES OF _____
(PRODUCT)

	1973	1974	1975	1976	1977	1978	1979	1980	1981
January	*******								
February	*******								*******
March									*******
April									*******
May									*******
June									*******
July									*******
August									*******
September									*******
October									*******
November									*******
December									*******
Yearly Total									

TOTAL FOR THIS PRODUCT: _____ GALLONS

Claims for less than $15.00 will not be processed (13,636 gallons total purchases).

✔ **Do not include any purchases of product on or after that product's date of decontrol. (See below for decontrol dates)**

Product	Date Decontrolled	Product	Date Decontrolled
Motor Gasoline, Propane	January 28, 1981	Diesel Fuel, Kerosene	July 1, 1976
Butane and Natural Gasoline	January 1, 1980	No. 1 and No. 2 Heating Oil	July 1, 1976
Aviation Gas and Jet Fuel	February 26, 1979	Residual Fuel	June 1, 1976
Naphtha-Based Jet Fuel	October 1, 1976	Ethane and Asphalt	April 1, 1974
Naphthas	September 1, 1976		

BILLING CODE 6450-01-C

Appendix A

Information Regarding the OHA TEXACO Refund Proceeding

Note: The following information is designed to assist those applicants that have basic questions about filing procedures. It is not comprehensive and does not respond to many of the complex questions that applicants for large refunds may have.

INSTRUCTIONS FOR FILING TEXACO REFUND APPLICATION FORMS

(1) All applicants may use the suggested refund application form and the Schedule of Purchases attached to it. Motor gasoline retailers should use a separate form for each gas station for which a refund is claimed. If you need additional forms, you may photocopy this one or copy it onto white paper.

(2) Each applicant should submit answers to all the questions on the suggested application form and suitable "volume documentation" (see Question 1 below).

(3) An ORIGINAL AND ONE COPY of the entire application should be submitted. Copies may be made onto white paper.

(4) Applications should be printed or typed. The completed application should be mailed to:

Texaco Inc. Refund Proceeding
Office of Hearings and Appeals
Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

(5) There is a $15.00 minimum refund. If you purchased less than 13,636 gallons of eligible Texaco products between March 6, 1973 and January 27, 1981, you will not receive a refund.

(6) All applications must be postmarked by February 28, 1991.

COMMON QUESTIONS REGARDING REFUND APPLICATIONS

(1) How do I document my purchase volume from Texaco?

Texaco has provided many direct purchasers with a computer printout of their eligible purchase volumes. If you have received one of these printouts, you should submit it with your application. If you agree with the information on your Texaco volume sheet, this printout serves as sufficient volume documentation and you do not have to complete the Schedule of Purchases. However, if you do not receive a printout, you should attempt to obtain one from Texaco by writing:

Texaco Inc.
Attention: Texaco DOE Customer Refund Coordinator
P.O. Box 5080
Bellaire, Texas 77402-5080

If you have received a volume printout, but disagree with the information on it, you should submit a copy of the printout as well as a monthly schedule for each product that you purchased. If you are unable to obtain a copy of your volume printout from Texaco, you may support your claim by submitting a monthly purchase schedule for each product purchased from Texaco. Further references to "volume documentation" in these questions refer to your Texaco printout and any supplementary material you may submit.

(2) I owned one gasoline retail outlet and I bought both gasoline and diesel fuel from Texaco. How should I file an application?

You should file one application form. In response to Question 4 of the application, you should state the sum (in gallons) of all Texaco products purchased and list the different types of products. You should also provide your volume documentation. If you own two retail outlets, file two application forms (with separate supporting volume documentation).

(3) I purchased gasoline from Texaco. What is the time period during which my purchases are eligible for a refund?

Purchases are eligible for refunds only if made when a particular product was subject to Federal price controls. Motor gasoline and propane were subject to price controls from March 6, 1973 through January 27, 1981. Other products were subject to price controls for shorter periods. See Schedule of Purchases for decontrol dates.

(4) My name is "John Smith." I was a Texaco wholesaler and the name of my business was "ABC Petroleum Products." What name should I use to answer Question 1 on the application (Name of Applicant)?

In this question, we are looking for the name of the business that actually purchased the products from Texaco. Thus, if the product was purchased by the firm "ABC Petroleum Products," the answer to Question 1, Name of Applicant, should be "ABC Petroleum Products."

(5) How will the DOE calculate my refund?

Under most circumstances, for each eligible gallon of Texaco product purchased an applicant can receive a refund of $0.0011. We call this "the volumetric refund amount." If, for example, you purchased 1,000,000 gallons of Texaco gasoline from March 1973 through January 27, 1981, you can generally expect a refund of approximately $1,100 (1,000,000 gallons x $0.0011/gal = $1,100)(plus interest). DOE will make the final calculations.

(6) Who is eligible for a "small claims refund"?

Petroleum marketers (refiners, resellers and retailers) are eligible for a "small claims refund" if their refund is $10,000 or less based upon the documented volume of eligible Texaco products purchased (9,090,909 gallons or less).

(7) How are refunds calculated using the 50 percent presumption of injury method?

The 50 percent presumption of injury method is available to petroleum marketers whose "volumetric share" (volumetric refund amount multiplied by eligible gallons) exceeds $10,000. Under the 50 percent method, refunds are calculated by multiplying the volumetric share by 50 percent. The applicant will receive either this amount (up to $50,000) or $10,000, whichever is greater, without being required to make a more detailed showing of injury.

(8) I am a petroleum marketer who bought a large volume of Texaco products and do not want to use the 50 percent presumption method. What information should be included in my refund application?

If you do not wish to use the 50 percent presumption method, there are special "injury" requirements you must meet in addition to submitting all of the information required of all applicants. These requirements are outlined in the Texaco Decision and Order. If you fail to show injury, or demonstrate that you are entitled to receive a refund less than the presumption level, you may receive a lesser refund or none at all.

(9) How can I get a copy of the Texaco Decision and Order?

You may write or call the Office of Hearings and Appeals at the address or telephone number listed in Question 17 below. Upon request, a copy of the Decision will be mailed to you.

(10) Can I elect the 50 percent presumption even if I bought a very large volume of Texaco product?

Yes. Any petroleum marketer applicant may always elect to limit its refund to $10,000 or 50 percent of its volumetric share, up to $50,000, whichever is greater. Since this avoids the need to submit detailed information and the possibility of a finding of non-injury, many petroleum marketers choose to limit their claims in order to take advantage of this simplified procedure. Interest on the Texaco settlement funds which DOE has placed in escrow will be added to the refund.

(11) I was a consumer (end-user) of the products that I purchased from Texaco. What do I need to submit in order to receive a refund?

In order to receive a refund, answer all of the questions on pages 1 and 2 of the application form (answer "Not Applicable" to Question 5) and provide a copy of your volume documentation.

(12) Must I have an attorney or other representative file on my behalf?

No. Most refund applications are filed directly by the individual or firm that purchased petroleum products. Furthermore, the OHA is willing to aid you free of charge with any questions that you may have regarding your application . However, if you choose to have a representative file on your behalf, you must sign the application form.

(13) I was a Texaco consignee. Am I eligible for a refund?

Yes. In this proceeding, consignees of Texaco products are eligible for refunds on an equal basis with resellers. Accordingly, consignees who complete an application form, including volume documentation of the product consigned to them, are eligible to receive refunds. Refund amounts will be determined using the volumetric approach described in Question 5 and either the small claims or the 50 percent presumption will be used in determining a consignee's refund. Consignees seeking a larger refund must submit a more detailed "injury" showing as described in the Texaco Decision and Order. A consignee who was also a reseller during the controls period should submit only one application but separate volume documentation for reseller portions of its business.

(14) How long will it take before I receive a refund?

We cannot say for sure because we expect thousands of refund applications to be filed. Routine applications that are properly completed and contain all information required, including adequate volume documentation, will be processed promptly. We will begin processing refund applications before the February 28, 1991 deadline for filing claims.

(15) Is my refund taxable?

If the petroleum products were purchased by a business, the refund is taxable. In all cases, your refund amount will be reported to the IRS by the DOE. You should consult your tax advisor if you have any questions regarding this matter.

(16) I have received an oil overcharge refund in another proceeding. Am I still eligible for a Texaco refund?

Yes. In most cases, the receipt of another oil overcharge refund, including crude oil refunds, refined product refunds, and disbursements from a Stripper Well escrow account, does not affect an applicant's eligibility to receive a Texaco refund.

(17) How do I get further information?

You may obtain further information by calling our DOE Texaco refund hotline at (202) 586-2456 from a touchtone telephone or (202) 586-3056 from a rotary phone between the hours of 8:30 a.m. and 5:00 p.m. eastern time, or by writing to:

Texaco Inc. Refund Proceeding
Office of Hearings and Appeals
Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

BILLING CODE 6450-01-C

Appendix C—Texaco Affiliates and Subsidiaries Presumed Ineligible in the Texaco Refund Proceeding

Arbuckle Pipe Line Co.
Badger Pipe Line Co.
Bareboat Tankship Corp.
Bay Drilling Corp.
Boca Del Mar Inc.
Bridgeline Gas Distribution Co.
Caltex Petroleum Corp.
Colonial Pipe Line Co.
Dixie Pipe Line Co.
Explorer Pipe Line Co.
Getty Oil Co.
Getty Scientific Development Co.
The Harrison Corp.
Huelva Pyrties, Inc.
Iricon Agency Ltd.
KAW Pipe Line Co.
Knightbridge Corp.
LOCAP Inc.
Loop Inc.
Neches Gas Distributing Co. Inc.
Olympic Pipe Line Co.
Osage Pipe Line Co.
Paragon Oil Co., Inc.
Petrotomics Co.
The Pipe Lines of Puerto Rico.
Riverway Gas Pipe Line Co.
Sabine Pipe Line Co.
Seaboard Pipe Line Co.
Seville Metals Corp.
Skelly Leasing Co.
Thums Long Beach Co.
Vancouver Plywood Co.
Vanply, Inc.
West Shore Pipe Line Co.
White Fuel Corp.
Whitney Fuel Supply
Wolverine Pipe Line Co.

[FR Doc. 90-5605 Filed 3-9-90; 8:45 am]
BILLING CODE 6560-01-M

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF DEFENSE

Department of the Army

[FRL-3732-3]

Memorandums of Agreement (MOA); Clean Water Act Section 404(b)(1) Guidelines; Correction

AGENCY: Environmental Protection Agency and Department of the Army.

ACTION: Notice; correction.

SUMMARY: This notice corrects a previously published notice (55 FR 5510; February 15, 1990) regarding a Memorandum of Agreement (MOA) between the Environmental Protection Agency and the Department of the Army that provides clarification and general guidance regarding the level of mitigation necessary to demonstrate compliance with the Clean Water Act section 404(b)(1) Guidelines. The previously published notice indicated that a copy of the MOA would be published as part of that notice. However, the actual text of the MOA was not in fact published. Consequently, we are correcting that notice by publishing the actual test of the MOA today, as well as re-publishing the original introductory language from the February 15, 1990 Federal Register notice.

DATES: The effective date of this MOA is February 7, 1990.

ADDRESSES: Copies of the MOA are available from:

Office of Wetlands Protection (A-104F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office of the Assistant Secretary of the Army, Department of the Army, Room 2E569, The Pentagon, Washington, DC 20310-0301.

Headquarters, U.S. Army Corps of Engineers, (CECW-OR), 20 Massachusetts Ave., NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Suzanne E. Schwartz of the Environmental Protection Agency at the address given above; telephone 202/475-7799, (FTS) 475-7799; or David Barrows of the Department of the Army at the address given above; telephone 202/695-1376, (FTS) 695-1376.

LaJuana S. Wilcher,

Assistant Administrator for Water.

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

On November 15, 1989, the Environmental Protection Agency and the Department of the Army signed a Memorandum of Agreement (MOA) that provides clarification and general guidance regarding the level of mitigation necessary to demonstrate compliance with the Clean Water Act Section 404(b)(1) Guidelines ("the Guidelines"). The agencies developed the MOA in response to questions that had arisen with respect to mitigation requirements under the Guidelines applicable to the review of applications for standard Section 404 permits. The intent of the MOA is to improve consistency in the implementation of the Guidelines and to eliminate misunderstanding and confusion on the part of agency personnel. Accordingly, we anticipate that the MOA will increase the effectiveness of the Section 404 program by reducing delays in permit processing, minimizing ambiguity in the regulatory program and by providing agency field personnel with a clearer understanding of the procedures for determining appropriate and practicable mitigation under the Guidelines.

The Domestic Policy Council, through its Inter-Agency Task Force on Wetlands, of which both the Environmental Protection Agency and the Army Corps of Engineers are members, has been tasked by the President to develop recommendations regarding attainment of the goal of no net loss of the Nation's wetlands. While the Section 404 regulatory program, including this MOA, can contribute to the attainment of that goal, neither the 404 program nor this MOA establish a no net loss policy for the Nation's wetlands. In meeting this charter, the Task Force will hold a series of public meetings around the country to solicit public views on appropriate strategies for achieving the no net loss of wetlands goal, including both regulatory and non-regulatory approaches. These public meetings will also address specific issues such as losses associated with agricultural activities in wetlands, and losses in specific geographic areas such as the Mississippi River Delta and along the Louisiana Gulf coast. The Task Force will also consider the challenges posed in Alaska where a high proportion of developable land is wetlands and where technical difficulties exist regarding opportunities for compensatory mitigation. The Task Force will also address issues such as the important roles of state and local government and private conservation groups; the need to ensure maximum possible coordination between Section 404 permitting actions and other environmental laws, including the National Environmental Policy Act; the role of market based strategies; mitigation policy, including mitigation banking; and the role of legislation in achieving the goal. The MOA will be reconsidered in light of development of a comprehensive no net loss policy.

The MOA interprets and provides internal guidance and procedures to the Corps and EPA field personnel for implementing existing Section 404 permit regulations. The MOA does not change substantive regulatory requirements. Rather, it provides a procedural framework for considering mitigation, so that all Corps and EPA field offices will follow consistent procedures in determining the type and level of mitigation necessary to ensure compliance with the Section 404(b)(1) Guidelines. The MOA also maintains the flexibility of the Guidelines by expressly recognizing that no net loss of

wetlands functions and values may not be achieved in each and every permit action. Specifically, the MOA recognizes that compensatory mitigation may not be required if mitigation is not practicable (as defined in § 230.3(q) of the Guidelines), feasible or would result in only inconsequential environmental benefits. For example, in areas of the country where wetlands constitute a majority of the land type, minor losses of wetland functions may not need to be mitigated by offsite compensatory mitigation. In making this determination field personnel may consider, among other things, the nature of the wetlands functions, cumulative effects on the watershed or ecosystem and whether wetlands in the contiguous area are protected through public ownership or permanent easement. The MOA does not establish any new mitigation requirements beyond those currently found in the Guidelines or modify the Guidelines in any way.

Since signing the MOA, the agencies have conducted discussions with affected Federal agencies regarding the MOA. As a result of those discussions, and in an attempt to clarify the agencies' intent regarding the scope and effect of the MOA, specific changes have been made to the language of the MOA. A copy of this revised MOA is published with this notice.

Memorandum Of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines

I. Purpose

The United States Environmental Protection Agency (EPA) and the United States Department of the Army (Army) hereby articulate the policy and procedures to be used in the determination of the type and level of mitigation necessary to demonstrate compliance with the Clean Water Act (CWA) Section 404(b)(1) Guidelines ("Guidelines"). This Memorandum of Agreement (MOA) expresses the explicit intent of the Army and EPA to implement the objective of the CWA to restore and maintain the chemical, physical, and biological integrity of the Nation's waters, including wetlands. This MOA is specifically limited to the Section 404 Regulatory Program and is written to provide guidance for agency field personnel on the type and level of mitigation which demonstrates compliance with requirements in the Guidelines. The policies and procedures discussed herein are consistent with current Section 404 regulatory practices and are provided in response to questions that have been raised about how the Guidelines are implemented. The MOA does not change the substantive requirements of the Guidlines. It is intended to provide guidance regarding the exercise of discretion under the Guidelines.

Although the Guidelines are clearly applicable to all discharges of dredged or fill material, including general permits and Corps of Engineers (Corps) civil works projects, this MOA focuses on standard permits (33 CFR 325.5(b)(1).[1] This focus is intended solely to reflect the unique procedural aspects associated with the review of standard permits, and does not obviate the need for other regulated activities to comply fully with the Guidelines. EPA and Army will seek to develop supplemental guidance for other regulated activities consistent with the policies and principles established in this document.

This MOA provides guidance to Corps and EPA personnel for implementing the Guidelines and must be adhered to when considering mitigation requirements for standard permit applications. The Corps will use this MOA when making its determination of compliance with the Guidelines with respect to mitigation for standard permit applications. EPA will use this MOA in developing its positions on compliance with the Guidelines for proposed discharges and will reflect this MOA when commenting on standard permit applications.

II. Policy

A. The Council on Environmental Quality (CEQ) has defined mitigation in its regulations at 40 CFR 1508.20 to include: avoiding impacts, minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts. The Guidelines establish environmental criteria which must be met for activities to be permitted under Section 404.[2] The types of mitigation enumerated by CEQ are compatible with the requirements of the Guidelines; however, as a practical matter, they can be combined to form three general types: avoidance, minimization and compensatory mitigation. The remainder of this MOA will speak in terms of these more general types of mitigation.

B. The Clean Water Act and the Guidelines set forth a goal of restoring and maintaining existing aquatic resources. The Corps will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources, and for wetlands, will strive to achieve a goal of no overall net loss of values and functions. In focusing the goal of no overall net loss to wetlands only, EPA and Army have explicitly recognized the special significance of the nation's wetlands resources. This special recognition of wetlands resources does not in any manner diminish the value of other waters of the United States, which are often of high value. All waters of the United States, such as streams, rivers, lakes, etc., will be accorded the full measure of protection under the Guidelines, including the requirements for appropriate and practicable mitigation. The determination of what level of mitigation constitutes "appropriate" mitigation is based solely on the values and functions of the aquatic resource that will be impacted. "Practicable" is defined at Section 230.3(q) of the Guidelines.[3] However, the level of mitigation determined to be appropriate and practicable under Section 230.10(d) may lead to individual permit decisions which do not fully meet this goal because the mitigation measures necessary to meet this goal are not feasible, not practicable, or would accomplish only inconsequential reductions in impacts. Consequently, it is recognized that no net loss of wetlands functions and values may not be achieved in each and every permit action. However, it remains a goal of the Section 404 regulatory program to contribute to the national goal of no overall net loss of the nation's remaining wetlands base. EPA and Army are committed to working with others through the Administration's interagency task force and other avenues to help achieve this national goal.

C. In evaluating standard Section 404 permit applications, as a practical matter, information on all facets of a project, including potential mitigation, is typically gathered and reviewed at the same time. The Corps, except as indicated below, first makes a determination that potential impacts have been avoided to the maximum extent practicable; remaining

[1] Standard permits are those individual permits which have been processed through application of the Crops public interest review procedures (33 CFR 325) and EPA's Section 404(b)(1) Guidelines, including public notice and receipt of comments. Standard permits do not include letters of permission, regional permits, nationwide permits, or programmatic permits.

[2] (except Section 404(b)(2) applies).

[3] Section 230.3(q) of the Guidelines reads as follows: "The term practicable means available and capable of being done after taking into consideration *cost, existing technology, and logistics in light of overall project purposes.*" (Emphasis supplied)

unavoidable impacts will then be mitigated to the extent appropriate and practicable by requiring steps to minimize impacts, and, finally, compensate for aquatic resource values. This sequence is considered satisfied where the proposed mitigation is in accordance with specific provisions of a Corps and EPA approved comprehensive plan that ensures compliance with the compensation requirements of the Section 404(b)(1) Guidelines (example of such comprehensive plans may include Special Area Management Plans, Advance Identification areas (Section 230.80), and State Coastal Zone Management Plans). It may be appropriate to deviate from the sequence when EPA and the Corps agree the proposed discharge is necessary to avoid environmental harm (e.g., to protect a natural aquatic community from saltwater intrusion, chemical contamination, or other deleterious physical or chemical impacts), or EPA and the Corps agree that the proposed discharge can reasonably be expected to result in environmental gain or insignificant environmental losses.

In determining "appropriate and practicable" measures to offset unavoidable impacts, such measures should be appropriate to the scope and degree of those impacts and practicable in terms of cost, existing technology, and logistics in light of overall project purposes. The Corps will give full consideration to the views of the resource agencies when making this determination.

1. Avoidance.[4] Section 230.10(a) allows permit issurance for only the least environmentally damaging practicable alternative.[5] The thrust of this section on alternatives is avoidance of impacts. Section 230.10(a) requires that no discharge shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact to the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. In addition, Section 230.10(a)(3) sets forth rebuttable presumptions that 1) alternatives for non-water dependent activities that do not involve special aquatic sites[6] are available and 2) alternatives that do not involve special aquatic sites have less adverse impact on the aquatic environment. Compensatory mitigation may not be used as a method to reduce environmental impacts in the evalaution of the least environmetnally dammaging praticable alternatives for the purposes of requirements under Section 230.10(a).

2. Minimization. Section 230.10(d) states that appropriate and practicable steps to minimize the adverse impacts will be required through project modifications and permit conditions. Subpart H of the guidelines describes several (but not all) means for minimizing impacts of an activity.

3. Compensatory Mitigation. Appropriate and practicable compensatory mitigation is required for unavoidable adverse impacts which remain after all appropriate and practicable minimization has been required. Compensatory actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands) should be undertaken, when practicable, in areas adjacent or contiguous to the discharge site (on-site compensatory mitigation). If on-site compensatory mitigation is not practicable, off-site compensatory mitigation should be undertaken in the same geographic area if practicable (i.e., in close physical proximity and, to the extent possible, the same watershed). In determining compensatory mitigation, the functional values lost by the resource to be impacted must be considered. Generally, in-kind compensatory mitigation is preferable to out-of-kind. There is continued uncertainty regarding the success of wetland creation or other habitat development. Therefore, in determining the nature and extent of habitat development of this type careful consideration should be given to its likelihood of success. Because the likelihood of success is greater and the impacts to potentially value uplands are reduced, restoration should be the first option considered.

In the situation where the Corps is evaluating a project where a permit issued by another agency requires compensatory mitigation, the Corps may consider that mitigation as part of the overall application for purposes of public notice, but avoidance and minimization shall still be sought.

Mitigation banking may be an acceptable form of compensatory mitigation under specific criteria designed to ensure an environmentally successful bank. Where a mitigation bank has been approved by EPA and the Corps for purposes of providing compensatory mitigation for specific identified projects, use of that mitigation bank for those particular projects is considered as meeting the objectives of Section II.C.3 of this MOA, regardless of the practicability of other forms of compensatory mitigation. Additional guidance on mitigation banking will be provided. Simple purchase or "preservation" of existing wetlands resources may in only exceptional circumstances be accepted as compensatory mitigation. EPA and Army will develop specific guidance for preservation in the context of compensatory mitigation at a later date.

III. Other Procedures

A. Potential applicants for major projects should be encouraged to arrange preapplication meetings with the Corps and appropriate federal, state or Indian tribal, and local authorities to determine requirements and documentation required for proposed permit evaluations. As a result of such meetings, the applicant often revises a proposal to avoid or minimize adverse impacts after developing an understanding of the Guidelines requirements by which a future Section 404 permit decision will be made, in addition to gaining an understanding of other state or tribal, or local requirements. Compliance with other statutes, requirements and reviews, such as NEPA and the Corps public interest review, may not in and of themselves satisfy the requirements prescribed in the Guidelines.

B. In achieving the goals of the CWA, the Corps will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources. Measures which can accomplish this can be identified only through resource assessments tailored to the site performed by qualified professionals because ecological characteristics of each aquatic site are unique. Functional values should be assessed by applying aquatic site assessment techniques generally recognized by experts in the field and/or the best professional judgment of Federal and State agency representatives, provided such assessments fully consider ecological functions included in the Guidelines. The objective of mitigation for unavoidable impacts is to offset environmental losses. Additionally for wetlands, such mitigation should provide, at a minimum, one for one functional replacement (i.e., no net loss

[4] Avoidance as used in the Section 404(b)(1) Guidelines and this MOA does not include compensatory mitigation.

[5] It is important to recognize that there are circumstances where the impacts of the project are so significant that even if alternatives are not available, the discharge may not be permitted regardless of the compensatory mitigation proposed (40 CFR 230.10(c)).

[6] Special aquatic sites include sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs and riffle pool complexes.

of values), with an adequate margin of safety to reflect the expected degree of success associated with the mitigation plan, recognizing that this minimum requirement may not be appropriate and practicable, and thus may not be revelant in all cases, as discussed in Section II.B of this MOA.[7] In the absence of more definitive information on the functions and values of specific wetlands sites, a minimum of 1 to 1 acreage replacement may be used as a reasonable surrogate for no net loss of functions and values. However, this ratio may be greater where the functional values of the area being impacted are demonstrably high and the replacement wetlands are of lower functional value or the likelihood of success of the mitigation project is low. Conversely, the ratio may be less than 1 to 1 for areas where the functional values associated with the area being impacted are demonstrably low and the likelihood of success associated with the mitigation proposal is high.

C. The Guidelines are the environmental standard for Section 404 permit issuance under the CWA. Aspects of a proposed project may be affected through a determination of requirements needed to comply with the Guidelines to achieve these CWA environmental goals.

D. Monitoring is an important aspect of mitigation, especially in areas of scientific uncertainty. Monitoring should be directed toward determining whether permit conditions are complied with and whether the purpose intended to be served by the condition is actually achieved. Any time it is determined that a permittee is in non-compliance with mitigation requirements of the permit, the Corps will take action in accordance with 33 CFR Part 326. Monitoring should not be required for purposes other than these, although information for other uses may accrue from the monitoring requirements. For projects to be permitted involving mitigation with higher levels of scientific uncertainty, such as some forms of compensatory mitigation, long term monitoring, reporting and potential remedial action should be required. This can be required of the applicant through permit conditions.

E. Mitigation requirements shall be conditions of standard Section 404 permits. Army regulations authorize mitigation requirements to be added as special conditions to an Army permit to satisfy legal requirements (e.g., conditions necessary to satisfy the Guidelines) (33 CFR 325.4(a)). This ensures legal enforceability of the mitigation conditions and enhances the level of compliance. If the mitigation plan necessary to ensure compliance with the Guidelines is not reasonably implementable or enforceable, the permit shall be denied.

F. Nothing in this document is intended to diminish, modify or otherwise affect the statutory or regulatory authorities of the agencies involved. Furthermore, formal policy guidance on or interpretation of this document shall be issued jointly.

G. This MOA shall take effect on February 7, 1990, and will apply to those completed standard permit applications which are received on or after that date. This MOA may be modified or revoked by agreement of both parties, or revoked by either party alone upon six (6) months written notice.

Dated: February 6, 1990.

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

LaJuana S. Wilcher,

Assistant Administrator for Water, U.S. Environmental Protection Agency.

[FR Doc. 90-5591 Filed 3-9-90; 8:45 am]

BILLING CODE 6560-50-M

[7] For example, there are certain areas where, due to hydrological conditions, the technology for restoration or creation of wetlands may not be available at present, or may otherwise be impracticable. In addition, avoidance, minimization, and compensatory mitigation may not be practicable where there is a high proportion of land which is wetlands. EPA and Army, at present, are discussing with representatives of the oil industry, the potential for a program of accelerated rehabilitation of abandoned oil facilities on the North Slope to serve as a vehicle for satisfying necessary compensation requirements.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3732-9]

Science Advisory Board; Core Research Plan Reviews; Open Meetings

Under Public Law 92-463, notice is hereby given that the U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB) will conduct three separate meetings to review Core Research Strategies developed by the Agency's Office of Research and Development (ORD). Information concerning these reviews is given below. The meetings are open to the public. Copies of the ORD Core Research documents discussed in this notice will be available from Ms. Jane Metcalfe, U.S. EPA, ORD, Tel. (202) 382-7669, approximately two weeks prior to the meeting. The Core Research documents are not available from the Science Advisory Board.

Meeting Summaries—Ecology Core Research Review: The Ecological Processes and Effects Committee (EPEC) will meet on April 2-3, 1990 at the Holiday Inn, 1000 Sully Road, Sterling, Virginia 22710. The meeting will begin at 9 a.m. on April 2, 1990 and adjourn no later than 5 p.m. on April 3, 1990. The Committee will review the ecological core research document "Ecological Risk Assessment Program". For this review, the Designated Federal Official is Dr. Edward S. Bender and the Staff Secretary is Mrs. Frances Dolby.

Health Core Research Review: The Environmental Health Committee (EHC) will meet on April 4-5, 1990 in Room 908 West Tower, U.S. EPA Headquarters, 401 M Street SW., Washington, DC 20460. The meeting will start at 9 a.m. on April 4, 1990 and will adjourn no later than 5 p.m. on April 5, 1990. The Committee will review the health core research document "Core Research Proposal for Health Risk Assessment". For this review, the Designated Federal Official is Mr. Sam Rondberg and the Staff Secretary is Mrs. Mary Winston.

Risk Reduction Core Research Review: The Environmental Engineering Committee (EEC) will meet on April 11, 1990 in Room 735 East Tower, and on April 12, 1990 in Room 908 West Tower, both rooms at U.S. EPA Headquarters, 401 M Street SW., Washington, DC 20460. The meeting will start at 9 a.m. on April 11, 1990 and will adjourn no later than 5 p.m. on April 12, 1990. The Committee will review the risk reduction core research document "Risk Reduction Core Research Summary". For this review, the Designated Federal Official is Dr. K. Jack Kooyoomjian and the Staff Secretary is Mrs. Marcy Jolly.

For Further Information—Agendas for each meeting are available from the SAB Staff Secretary listed for that meeting at the address and phone number given below. For further information concerning a specific review, please contact the SAB Designated Federal Official listed for that review at the address and phone number given below. Science Advisory Board (A-101-F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Tel. (202-382-2552), FAX (202-475-9693). Seating at the meetings is on a first come basis.

Anyone wishing to make a presentation at the meeting must forward a written statement to the appropriate Designated Federal Official at least five (5) business days prior to the meeting. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral